



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

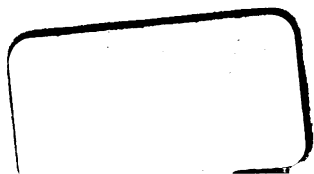
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Jan S. Henderson, Jr.



DN
AWP
SL 20

Sam S. Henderson, Jr.,

Cameron,

9 stars.

March 26, 1917.

LAW

OF

OIL *and* NATURAL GAS

A HAND BOOK

OF

THE STATUTES OF TEXAS AND THE DECISIONS OF
ITS COURTS RELATING TO OIL AND NATURAL
GAS, THE ORGANIZATION AND OPERATION
OF OIL AND GAS COMPANIES, AND THE
OWNERSHIP AND TRANSFER OF
MINERAL RIGHTS.

BY

Handwritten signature
A. E. WILKINSON, Reporter to Supreme Court
and J. A. RICHARDSON, of the Austin Bar.



E. L. STECK, AUSTIN
1915

COPYRIGHT, 1915, BY
A. E. WILKINSON AND J. A. RICHARDSON.

PREFACE.

The recent development of extensive oil and gas fields in Texas and the activity displayed in their exploration and mining operations therein are thought to justify this effort to present, in brief and convenient form, the statutes of this State and the rulings of its courts bearing on the subject.

We have included so much of the General Corporation Laws as have any application, the statutes relating to mines and mining, those regulating oil and gas wells, the act governing issuance and sales of corporate stock, commonly known as the Blue Sky Law, and a concise summary of the rulings of the appellate courts of the State on mineral rights in land, their ownership acquisition and transfer.

Large sums of money are being invested in these interests by men who have had little opportunity to learn the law governing the rights and contracts with which they are dealing. Lawyers called upon to advise them sometimes find themselves entering upon a new field, and compelled to search through many volumes of statutes and reports for an answer to the questions asked them. Even those who have made special study of the subject may welcome a manual like the present, which brings into brief compass the information required.

We have sought to bring this presentation of the subject up to date, by including important statutes enacted by the present Legislature (the 34th) and recent decisions of the appellate courts accessible to the profession only through advance sheets of the volumes in which they are to appear. Questions of great interest are involved in some of these rulings and in cases pending and not yet determined, to which attention is called.

We have added forms for the creation of corporations and for the sale or lease of mining rights in oil and natural gas, such as have been approved or are in common use.

A. E. WILKINSON,
J. A. RICHARDSON.



CONTENTS.

	PAGE.
CORPORATION LAWS OF TEXAS	7- 53
MINING LAWS OF TEXAS	54- 64
FRANCHISE TAX	64- 67
OIL AND GAS WELLS	67- 71
BLUE SKY LAW AND ATTORNEY GENERAL'S OPINION	72-108
MINERALS AND MINING RIGHTS	109-135
What are minerals	109
Ownership	109-110
Tenants in common	111
Tenants for years	111
Ways and easements	111-112
Rivers and tidal waters	112-113
Separation from title to soil	113-114
Conditional contracts and leases	114-120
Options and unilateral contracts	120-122
Contracts for operation	122-123
Public Lands	123-124
Employer's liability	124
Taxation, state and federal	125-135

CORPORATION LAWS OF TEXAS.

(From Constitution, Revised Statutes, 1911, and later Acts. Only such laws as relate to the subject of oil and gas companies are included.)

CONSTITUTION OF TEXAS, ART. 12.

Section 1. No private corporation shall be created except by general laws.

Section 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

Section 6. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.

NOTE.—Certain corporations created for public service, though chartered as private corporations, are quasi-public and subject to regulation in the public interest. *City Water Co. vs. State*, 33 S. W., 259. Oil and gas wells, though private property, are subject to statutory regulations, in the public interest, to prevent wasting the supply in their fields. *Ohio Oil Co. vs. Indiana*, 177 U. S., 190.

REVISED STATUTES, 1911.

Title 25.

CORPORATIONS—PRIVATE.

CHAPTER I.

PRELIMINARY PROVISIONS.

Article 1117. *Corporations Classified.*—Corporations are either public or private. (Act of April 23, 1874, p. 120. P. D., 5932. Acts 1873, p. 42.)

Article 1118. *Public Corporations.*—A public corporation is one that has for its object the government of a portion of the State. (P. D., 5933.)

Article 1119. *Private Corporations.*—Private corporations are of three kinds: First, religious; second, corporations for charity or benevolence; and, third, corporations for profit. (R. S., 1879, 564. P. D., 5934.)

NOTE.—A gas company is a private corporation. The fact that it is quasi-public, being engaged in public service, does not prevent its exercise of powers conferred on all private corporations, such as to borrow money and to mortgage its property by deed of trust. *Pumphrey vs. Threadgill*, 9 Texas Civ. App., 184, 28 S. W. 450. But a public service corporation can not sell or mortgage its franchise as a corporation. *City Water Co. vs. State*, 88 Texas, 602, 32 S. W., 1033. And it may be dissolved for failure to perform its functions. *Id.* A corporation is a "person," coming within the equal protection clause of the fourteenth amendment to the constitution of U. S. State vs. T. & P. Ry. Co., 143 S. W., 223.

CHAPTER II.

CREATION OF CORPORATIONS.

Article 1120. *Private Corporations May be Created.*—Private corporations may be created by the voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned. (Acts 1874, p. 120. Acts 1897, p. 188; P. D., 5935.)

NOTE.—The Secretary of State may refuse to file a charter expressing a purpose not authorized by the statute. *Miller vs. Tod*, 95 Texas, 404, 67 S. W., 483; *Ramsey vs. Tod*, 95 Texas, 614, 93 Am. St., 875, 69

S. W., 133; *American Salt Co vs. Heidenheimer*, 80 Texas, 344, 15 S. W., 1038. His rulings and those of the Attorney General on these questions are not judicial determinations, but may be persuasive on the courts in case of doubt. *Fire Ass'n. vs. Love*, 101 Texas, 381, 108 S. W., 158; *Houston & T. C. R. R. Co. vs. State*, 95 Texas, 507, 68 S. W., 777; *Galveston, H. & S. A. Ry. Co. vs. State*, 81 Texas, 572, 17 S. W., 67; *State vs. Gunter*, 36 Texas Civ. App., 381, 81 S. W., 1028.

Corporations can not be formed for two purposes expressed in distinct paragraphs of the statute (Article 1121) except as specially authorized by paragraphs 72, 73, Article 1121 post. *G. C. & S. F. Ry. Co. vs. Morris*, 67 Texas, 692, 4 S. W., 156; *Ramsey vs. Tod*, 95 Texas, 614, 69 S. W., 133; *Borden vs. Tres Palacios Rice Co.*, 82 S. W., 463. A body not legally organized, but acting under color of law, may be a de facto corporation. *American Salt Co. vs. Heidenheimer*, 80 Texas, 344, 15 S. W., 1038. And its existence not to be questioned collaterally. *Conley vs. Daughters of Republic*, 151 S. W., 883. But only where there has been an effort to comply and the defects are merely formal. *Allen vs. Long*, 80 Texas, 261, 16 S. W., 43. Such as failure to elect directors. *Conley vs. Daughters of Republic*, supra.

Article 1121. *For What Purposes Corporations May be Created.*—The purposes for which private corporations may be formed are:

13. The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them, to the public by any means.

16. For the establishment and maintenance of oil companies, with the authority to contract for the lease and purchase of the right to prospect for, develop and use, coal and other minerals, petroleum, and gas; also, the right to erect, build and own, all necessary oil tanks, cars, and pipes, necessary for the operation of the business of the same. (Act of March 31, 1915, Laws, 34th Leg., p. 225.)

NOTE.—Paragraph 16, of Article 1121, is here given as amended by Act of March 31, 1915. The paragraph as it stood in the Revised Statutes of 1911 was as follows:

"16. For the establishment and maintenance of oil companies, with authority to contract for the lease and purchase of the right to prospect for, develop, and use, coal and other minerals, and petroleum; also, the right to erect, build, and own, all necessary oil tanks cars, and pipes, necessary for the operation of the business of the same. (Acts, 1897, p. 188)."

The Act of 1915 is printed in full, following this note. The second section of the Act confers the same powers on corporations heretofore created under paragraph 16. The amendment was obviously designed to remove any doubt as to the powers of such companies to operate for the production of natural gas, which was not specifically enumerated among the minerals to be mined. It would seem, however, that a fair construction of this paragraph, as it stood before the amendment, would include natural gas under the "other minerals" mentioned. Even a strict application of the rule of construction which would limit such general language to like minerals to those specially enumerated would reach this result. Those mentioned are such as are useful for the production of light and heat. Petroleum and natural gas are commonly found in the same general field of exploration. They are produced by the same method of mining,—that is, by bored wells. And the prospector would generally be unable to determine which he might strike.

This paragraph gives only the authority to contract for the lease and purchase of the right to prospect for, develop, and use the minerals mentioned; but the right to purchase and hold real estate otherwise than by lease or contract for prospecting and mining, so far as appropriate to the corporate business, is conferred on all private corporations. Art. 1140, par. 4, and note, Art. 1175 and note. Under these, it seems such corporations would have the power to purchase and hold in fee the land necessary for their operations, as well as to lease or to buy merely the mineral rights.

For form of a purpose clause of a corporation created under this paragraph, see Form II, post.

GENERAL LAWS, 34TH LEG., P. 225.

[S. B. No. 282.]

CHAPTER 144.

An Act to amend Title 25, Chapter 2, Article 1121, Subdivision 16, Revised Statutes of Texas, 1911, providing for the creation of private corporations for the establishment and maintenance of oil companies with authority to contract for, lease and purchase; of the right to prospect for, develop and use coal and other minerals, by adding thereto the right to contract for the lease and purchase, of the right to prospect for, develop and use gas; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 1121, Subdivision 16, of Title 25, Chapter 2, of the Revised Statutes of the State of

Texas, 1911, be amended so as to hereafter read as follows:

"For the establishment and maintenance of oil companies with the authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of same."

SEC. 2. All private corporations heretofore created under the provisions of Subdivision 16, Article 1121, Chapter 2, Title 25, Revised Statutes of Texas of 1911, shall, in addition to the powers therein enumerated, have the power to contract for the lease and purchase of the right to prospect for, develop and use gas; also erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of same.

SEC. 3. The fact that there is no authority for the creation of corporations to contract for the lease and purchase of right to prospect for, develop and use gas creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days be suspended, and said rule is hereby suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

NOTE.—S. B. No. 282 passed the Senate March 19, no vote given. Passed the House March 19, no vote given.

Approved March 31, 1915.

Takes effect 90 days after adjournment.

(Article 1121, Rev. Stats., 1911, continued.)

39. For the purpose of doing business in any State or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants and systems of every character.

72. Private Corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes, namely: The construction or purchase and maintenance of mills and gins; the manufacture and supply to the public, by any means, of ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either, the harvesting of grain or the harvesting and threshing of grain; provided, that the authorized capital stock of all corporations, authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. (Acts 1903, p. 227.)

73. Private corporations may be created for, or after being created may so amend their charters so as to include two or more of the following purposes, namely: The supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public; the generation of and supply of gas, electric light and motor power to the public; the manufacture, supply and sale of carbonated water to the public; the operation of cottonseed oil mills and the operation of cotton compresses. Provided, that corporations including more than one of the purposes named in this article shall pay the franchise tax provided by law for each of the purposes so included in their said charters or amendments thereto; and provided further that the authorized capital stock of corporations created under or authorized by this article which shall include irrigation and any one or more of the other purposes named in this article, shall not exceed \$1,000,000; and that the authorized capital stock of corporations created under or authorized by this article which shall include waterworks, for the supply of water to the public or municipalities, and any one or more of the other purposes named in this article except irrigation, shall not exceed \$500,000, and that the authorized capital stock of corporation so authorized by this article for any two or more of the purposes named in this article except irrigation and waterworks

or the supply of water to the public, shall not exceed \$200,000. (Acts 33rd Leg., p. 352.)

NOTE.—The foregoing enumeration of the purposes for which corporations may be chartered contains no provision suitable for the organization of a natural gas company with power at once to produce such gas from wells, to transport it to points where it may find a market, and there sell it to consumers. A gas company created under paragraph 13, ante, if the right to "manufacture and supply" were held to cover the production of natural gas from wells, would be without the power to exercise eminent domain or construct pipe lines from the wells to towns where there might be a demand for its consumption. An oil company organized under paragraph 16, ante, would have the right, under the amendment of March 13, 1915, "to prospect for, develop and use coal and other minerals, petroleum and gas." It had, in the opinion of the writers, such power even before the amendment. But it would have no power to construct pipe lines for its transportation to market. A pipe line company organized under Articles 1303-1308, post, would be authorized only to "store, transport, buy and sell," and would be a common carrier obliged to transport for all without discrimination (Art. 1308). If it is desired to organize a natural gas company to produce such article from its wells, lay pipe lines for its transportation to such towns as can be reached by that means, and then sell to consumers, it should be chartered under the Act of March 25, 1911, Laws, 32d Leg., ch. 111, p. 228, which is held by the Attorney General's department to authorize the creation of a company with such powers. See that Act, post, p. 45, and note thereto.

Article 1122. *Charter and What it Must Set Forth.*—A charter must be prepared setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of those who are appointees for the first year.
6. The amount of its capital stock, if any, and the number of shares into which it is divided.
7. The charter of a bridge or ferry company shall

also state the stream intended to be crossed by the bridge or ferry.

8. The charter of a road company shall also state: First, the kind of a road intended to be constructed; second, the places from and to which the road is intended to be run; third, the counties through which it is intended to be run; fourth, the estimated length of the road. (P. D., 5937.)

NOTE.—For approved form of charters under this article, see post, Form I. Some preliminary organization is assumed in the statute, since directors must be designated and stock subscribed. Articles 1122, 1125, 1127, post; *Smith vs. First Nat. Bank*, 43 Texas Civ. App., 495, 95 S. W. 1116. This subject of sale of stock before chartering, and how expenses of promotion and organization are to be met is now strictly regulated by the Act of August 31, 1913 (The Blue Sky Law), post, pp. 72-81.

Article 1123. Charter Must be Subscribed and Acknowledged.—The charter of an intended corporation must be subscribed by three or more persons; two of whom at least must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgment of deeds; provided, that all charters for the purposes named in clauses two and three of Article 1121 of this chapter and title may be subscribed by married women, who may also be stockholders, officers and directors thereof; and their acts, contracts and deeds shall be as binding and effective for all purposes of said corporation as if they were males; and the joinder and consent of their husbands and privy examinations separate and apart from them shall not be required. (Acts 1887, p. 103.)

NOTE.—The statute does not require that the citizenship of all the incorporators appear on the face of the instrument, nor provide how it is to be determined; but the Secretary of State has authority to inquire into the fact. If none of them were citizens the approval of the charter by the Secretary created them a de facto corporation. The State could forfeit the charter because illegally obtained, but the incorporators were not liable as partners to persons dealing with them. *American Salt Co. vs. Heidenheimer*, 80 Texas, 344, 15 S. W., 1038.

Article 1124. *Business Firm Shall Give Notice of Intention to Incorporate.*—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of State government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and, if not, then in some newspaper published in some adjoining county; and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

Article 1125. *Private Corporations for Profit Must Subscribe Full Amount of Stock and Pay Fifty per cent of Same, Before Being Chartered.*—The stockholders of all private corporations created for profit with an authorized capital stock under the provisions of this chapter, shall be required, in good faith, to subscribe the full amount of its authorized capital stock, and to pay fifty per cent thereof before said corporation shall be chartered. (Acts 1901, p. 18. Acts 1897, p. 192. Acts 1907, p. 309, Sec. 1.)

Article 1126. *Secretary of State to Receive, File and Record Charter, on Satisfactory Evidence of Compliance, and Payment of Fees and Franchise Tax.*—Whenever the stockholders of any such company shall furnish satisfactory evidence to the Secretary of State that the full amount of the authorized capital stock has in good faith been subscribed, and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be to the company of the actual value at which it was taken, or property actually received, it shall be the duty of said officer, on payment of office fees and franchise tax due, to receive, file and record the charter of such company in his office, and to give his certificate showing the record thereof. (Id.)

Article 1127. *Satisfactory Evidence Defined.*—Satisfac-

tory evidence above mentioned shall consist of the affidavit of those who executed the charter, stating therein:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company.

2. The amount subscribed by each, and the amount paid by each.

3. The cash value of any property received, giving its description, location and from whom and the price at which it was received.

4. The amount, character and value of labor done, from whom, and price at which it was received. (Id.)

Article 1128. *Secretary of State May Require Other Evidence.*—If the Secretary of State is not satisfied, he may, at the expense of the incorporators, require other and more satisfactory evidence before he shall be required to receive, file and record said charter. (Id.)

NOTE.—For approved forms of the affidavits required by Articles 1125-1128, see post, Form IV. As to how stock is to be paid for, and for what consideration in property or services rendered it can be issued, see Article 1146 and note thereunder.

Article 1131. *Must be Filed with Secretary of State, Etc.*—Such charter shall thereupon be filed in the office of the Secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof, certified under the great seal of the State, shall be evidence of the creation of the corporation. (Act April 23, 1874, Sec. 9. P. D., 5940.)

NOTE.—The Secretary of State may be compelled by mandamus from the Supreme Court to file a charter which complies with the law, where he refuses so to do. *Miller vs. Tod*, 95 Texas, 404, 67 S. W., 483; *Ramsey vs. Tod*, 95 Texas, 614; 69 S. W., 133; *G. C. & S. F. Ry. Co. vs. Morris*, 67 Texas, 692, 4 S. W., 156.

Article 1132. *Corporations Shall Exist from Time of Filing Charter, Etc.*—The existence of the corporation shall date from the filing of the charter in the office of the Secretary of State, and the certificate of the Secretary of

State shall be evidence of such filing. (Id., Sec. 10. P. D., 5941.)

NOTE.—No proceedings short of filing the charter create the individuals into a corporation. *Bank of De Soto vs. Reed*, 50 Texas Civ. App., 102, 109 S. W., 259. But after it is filed their liability for the undertakings of its owners and managers becomes that of stockholders. *Bank vs Texas Inv. Co.*, 74 Texas, 421, 12 S. W., 101.

Article 1133. *Charter May Be Amended, How.*—Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter may amend or change its charter or act of incorporation by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments or changes with the Secretary of State; and, in case of a corporation, created by special act of the Legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the Secretary of State, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the Legislature; and the same shall be recorded by the Secretary of the State, followed by the proposed amendments or changes thereof. (Id., Sec. 10. P. D., 6011b.)

NOTE.—As to amendments which increase capital stock see note to Article 1145 post.

Article 1134. *When Amendments Shall Take Effect.*—The amendments or changes provided for in the preceding articles shall take effect and be in force, from the date of the filing thereof with the Secretary of State; and the certificate of the Secretary of State shall be evidence of such filing. (Id.)

Article 1135. *Amendments, What Void and What Valid.*—No amendment or change violative of the Constitution or laws of this State or any of the provisions of this

title shall be of any force or effect; amendments or changes may include additional purpose for which private corporations may be incorporated to that contained in its original or amended charter, as are specified in subdivision 72 of Article 1121; but such amendments which so change the original purpose of such corporation as to prevent the execution thereof shall be of no force or effect. (Acts 1903, p. 227.)

Article 1137. *Renewal and Consolidation of Two or More Such Corporations, Etc., How.*—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the fact of consolidation, accompanied by certified copies of said original charters; provided, the provision thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. (Id.)

NOTE.—Consent of stockholders is necessary to consolidation. Clark vs. Brown, 108 S. W., 421. Purchase by one corporation of the property and franchises of another does not effect a consolidation. Supreme R. F. M. C. vs. Erickson, 131 S. W., 92. Nor show identity of the two concerns. McLean & D. vs. Pressed Brick Co., 128 S. W., 442. Nor subject the purchaser to the seller's liability to an injured servant. Abilene C. Oil Co., vs. Anderson, 41 Texas Civ. App., 342, 91 S. W., 607. As to consolidation of corporations of different states see: Whaley vs. Bankers Union, 39 Texas Civ. App., 385, 88 S. W., 259; Gordon vs. American P. of S., 141 S. W., 331.

Article 1138. *Existence of Corporation Shall not be Disputed Collaterally.*—No person who assumes an obligation to an ostensible corporation, as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for the purpose.

NOTE.—This proceeding can only be had by the State. *Troutman vs. McCleskey*, 7 Texas Civ App., 561, 27 S. W., 173; *Oriental vs Barclay*, 16 Texas Civ. App., 193, 41 S. W., 117; *Oriental Inv. Co. vs. Sline*, 41 S. W., 130; *Conley vs. Daughters of Republic*, 151 S. W., 877; *Railway Co. vs. Anderson County*, 150 S. W., 250; *Dillard vs. Lumber Co.*, 141 S. W., 1023.

Article 1139. *Legislature May Alter, Reform or Amend.*
—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the Legislature to alter, reform or amend the same. (Act April 23, 1874, Sec. 9.)

CHAPTER III.

POWERS AND DUTIES OF PRIVATE CORPORATIONS AND DUTIES OF STOCKHOLDERS IN REFERENCE THERETO, ETC.

Article 1140. *General Powers of Corporations.*—Every private corporation, as such, has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.
2. To maintain and defend judicial proceedings.
3. To make and use a common seal.
4. To purchase, hold, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take hold, and convey such other property, real, personal, or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.
5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.
6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs and the transfer of its stock.
7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-one; provided, that any corporation formed under subdivisions 1, 2 and 3, Article 1121, may increase the number of its directors or trustees to not more than twenty-five. (Id. Acts 1907, p. 301. Acts 1909, p. 225. P. D., 5942.)

NOTE.—Par. 1. The company acquires no other powers than right to corporate existence except as these are conferred by the statute. *Ft. Worth etc. Ry. Co. vs. Rosedale St. Ry. Co.*, 68 Texas, 163, 7 S. W., 381; *Lyons-Thomas Hdw. Co. vs. Perry Stove Mfg. Co.*, 86 Texas, 149, 22 L. R. A., 802, 24 S. W., 16; *Scott vs. Farmers & M. Nat'l Bank*, 66 S. W., 495. But it has implied authority to do whatever is necessary or appropriate to the exercise of the powers expressly given. *Dillard vs. Lumber Co.*, 141 S. W., 1023. It may foster its own business by such means as are usual in such business and directly beneficial; but not by unusual means of only indirect benefit, as where one street railway company extended its credits to another through a joint issue of bonds. *North Side Ry. Co. vs. Worthington*, 88 Texas, 562, 30 S. W., 1055. It was held that a corporation for selling liquor may become surety on the bond of a saloon-keeper, as a means of promoting its sales, though he was only a possible customer. *Munoz vs. Brassel*, 108 S. W., 417. But the contrary was held as to the power of a lumber company to become surety on a building contractor's bond. *W. C. Bowman Lbr. Co. vs. Pierson*, 139 S. W., 618. This latter ruling is now before the Supreme Court for review, it having required the question to be certified because of conflict in the decisions. *Bank vs. Conner*, 106 Texas,—, 172 S. W., 1106. A corporation cannot indorse accommodation paper. *Deaton Gro. Co. vs. Int. Harv. Co.*, 47 Texas Civ App., 267, 105 S. W., 556; *Waller vs. Gorman Merc. Co.*, 141 S. W., 833. Its power to become a guarantor or surety for another is limited to contracts proper for the promotion of the business for which it was chartered. *Forty Acre L. S. Co. vs. West Tex. Bk. & Tr. Co.*, 111 S. W., 417; *South Tex. Nat. Bk. vs. LaGrange Oil Mill Co.*, 40 S. W., 328; *Gaston & Ayres vs. Campbell Co.*, 130 S. W., 222; *North Tex. St. Bk. vs. Crowley-S. Com. Co.*, 145 S. W., 1027. It can not enter into partnership with others. *Markowitz vs. Greenwall Theat. Circuit*, 75 S. W., 74; *Sabine Tram Co. vs. Bancroft*, 16 Texas Civ. App., 170, 40 S. W., 837. It may act as trustee in matters within scope of charter powers. *Conley vs. Daughters of Republic*, 151 S. W., 877.

Par. 2. Should sue or be sued by corporate name. *Southern Pac.*

Co. vs. Burns, 23 S. W., 288. Its capacity in this respect is the same as natural persons. Conley vs. Daughter of Republic, 151 S. W., 877. And it is entitled to the same rights of action and measure of damages. Railway Co. vs. Broussard, 69 Texas, 617, 7 S. W., 374; Railway Co. vs. Telegraph Co., 69 Texas, 277, 5 Am. St., 45, 5 S. W. 517. It may sue its members. Article 1171 post. Allegation that plaintiff or defendant is incorporated can only be denied under oath. Rev. Stats. Article 1906.

Par. 3. Corporate seal is required in conveyance of land. Post, Article 1173. But not to a sale or mortgage of chattels. Fowler vs. Bell, 35 S. W., 822.

Par. 4. As to right to acquire and hold land, see post, Article 1175 and note. The right to sell is an incident to ownership. Knowles vs. Traction Co., 121 S. W., 232. An oil company may lease its real property to another to be operated for it by the lessee on a royalty basis. State vs. Guffey Pet. Co., 85 S. W., 1084.

Par. 5. May appoint a general manager, though not mentioned as an officer in charter or by-laws. Hamm vs. Drew, 83 Texas, 77, 18 S. W., 434; Markowitz vs. Greenwall Theat. Circuit, 75 S. W., 74.

Par. 6. A by-law is a permanent rule for conducting the corporate business, as distinguished from a resolution or single act. Steger vs. Davis, 8 Texas Civ. App., 23, 27 S. W., 1068. Power to make and change by-laws. Gabel vs. Houston, 29 Texas, 336; Tempel vs. Dodge, 89 Texas, 68, 32 S. W., 514, 33 S. W., 222. They must not be inconsistent with charter. Gabel vs. Houston 29 Texas, 336; Clark vs. Brown, 108 S. W., 421; Mathis vs. Pridham, 1 Texas Civ. App., 58, 20 S. W., 1015. May create a contract with stockholder. Howe G. & M. Co. vs. Jones, 21 Texas Civ. App., 198, 51 S. W., 24. By-laws regulating transfers of stock. Seeligson vs. Brown, 61 Texas, 114. As to by-laws of benefit society as affecting the rights of their members, see: Splawn vs. Chew, 60 Texas, 532; Byrne vs. Casey, 70 Texas, 247, 8 S. W., 38; Knights and L. of H. vs. Grace, 60 Texas, 569; Duer vs. Supreme Council, 21 Texas Civ. App., 493, 52 S. W., 109; Association vs. Taylor, 23 Texas Civ. App., 367, 56 S. W., 553; Eversberg vs. Supreme Tent, 33 Texas Civ. App., 549, 77 S. W., 246; Grand Lodge vs. Stumpf, 24 Texas Civ. App., 309, 58 S. W., 840; Home Circle vs. Shelton, 81 S. W., 84; Sovereign Camp vs. Carrington, 41 Texas Civ. App., 29, 90 S. W., 921. A recent and important discussion of the power to affect the rights of stockholders by by-laws or resolutions will be found in Yeaman vs. Galveston City Co., 106 Texas, —, 167 S. W., 710.

Par. 7. See note under paragraph 1 above, as to the implied powers conferred on corporations. May borrow money, and for that purpose may guaranty the note of another to the extent that it receives proceeds. Gaston & Ayres vs. Campbell Co., 104 Texas, 576; Waller vs. Gorman Merc. Co., 141 S. W., 833. May issue and sell bonds. Article 1162 post and note. Corporation can make only such contracts as are

essential or proper to carrying on its authorized business. Contracts not within the scope of such business are invalid. Thus: Acquiring land not for corporate purpose. *Scott vs. Bank*, 66 S. W., 495. Exchange of land for personal property. *Land Co. vs. McCormick*, 85 Texas, 416. Lending its credit to another company by joint issue of bonds. *North Side Ry. Co. vs. Worthington*, 88 Texas, 562, 30 S. W., 1055. As to its power to become guarantor or surety, for another see, further, note to paragraph one above. Persons contracting with the corporation for consideration received are estopped from denying its power to make the contract. *Bond vs. Terrell Mfg. Co.*, 82 Texas, 309, 18 S. W., 691; *Petroleum Co. vs. Townsite Co.*, 48 Texas Civ. App., 555, 107 S. W., 609; *Smith vs. White*, 25 S. W., 809; *Keys vs. Building & L. Assn.*, 25 S. W., 809; *Bond vs. Mfg. Co.*, 82 Texas, 309. The corporation is also estopped from claiming that its act was invalid, as beyond its charter powers, so far as it has received benefits. *Live-stock Co. vs. Bank & Tr. Co.*, 111 S. W., 417; *Gaston & Ayres vs. Campbell Co.*, 130 S. W., 222; *Kincheloe Irr. Co. vs. Hahn Bros. & Co.*, 146 S. W., 1187; *Cont. Fire Assn. vs. Masonic Temple Co.*, 26 Texas Civ. App., 139, 62 S. W., 930. But neither party is estopped while the contract remains wholly executory. *San Antonio Hdw. Co. vs. Sanger*, 151 S. W., 1104.

Article 1141. *Unpaid Stock Payable When; Proof of Payment.*—The stockholders of all corporations chartered as provided in Articles 1125 to 1128, inclusive, as modified by Article 1129, shall, within two years from the date of the filing of such charter by the Secretary of State, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made to the Secretary of State, in the manner provided in Articles 1126 to 1128, inclusive, for the filing of charter. (Acts 1907, p. 309, Sec. 2.)

Article 1142. *On Default of Payment, Secretary of State to Forfeit Charter, How.*—In case of failure to pay the unpaid portion of capital stock, and to make proof thereof to the Secretary of State within two years from the date of the filing of the charter, the charter of such company shall, because thereof, become forfeited; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the ledger kept in his office relating to such corporations the word "forfeited," giving the date and reason therefor. (Id.)

Article 1143. *Notification of forfeiture; Record of Same; Relief from Forfeiture Within Six Months, Conditions of, Etc.; Revival.*—The Secretary of State shall notify such corporations by mailing to the postoffice named as its principal place of business, or to any other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture; a record of the date and fact of such notice must be kept by such officer; provided, that the stockholders of any such corporation whose charter has been forfeited as above provided who shall, within six months from the date of such forfeiture, and not thereafter, pay in full the unpaid capital stock of such company and furnish to the Secretary of State proof of such fact as required herein, and, in addition, shall pay the Secretary of State, as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, the company shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word "revived," giving the date thereof. (Id.)

Article 1144. *On Failure to Revive, Affairs of Corporation Wound up; Provided Right to Avoid Forfeiture Within Two Years, But no Prejudice to Creditor.*—If the stockholders should fail to cause the charter powers of said corporation to be revived, as just provided, then, and in such event, the affairs of such company shall be administered and wound up as on dissolution; provided, however, the stockholders of any such company shall have the right, at any time within the two years given, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter; but no creditor of said company shall in anywise be prejudiced by such reduction of its capital stock in any claim or

cause of action such creditor may have against such company or any stockholder or officers thereof. (Id.)

Article 1145. *May Increase Its Capital Stock, How.*—A corporation may increase its authorized capital by a two-thirds vote of all its stock; provided, that no stock shall be issued except for money paid, labor done or property actually received. And when such vote is given in favor of the increase, the same may be done by the board of directors, trustees, or managing board, of such corporation; and, upon such increase of stock being made in accordance with the above provisions and certified to the Secretary of State by the directors, together with satisfactory proof, which shall be the affidavit of the directors showing that the full amount of the increase has been in good faith subscribed, and fifty per cent thereof paid, and in other respects conforming to the proof required as an original application for charter, or showing that such portion thereof has been subscribed or subscribed and paid, as is required for the corporation, thus increasing its stock, and, if the Secretary of State is satisfied that the increase of stock has been made in accordance with law and that the requirements of law have been complied with as to the subscription and payment of stock and in other respects, as on an original application for charter, he shall file such certificate of increase; and thereupon the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. (Id., Sec. 3.)

NOTE.—Previous to the Act of 1907, Session Laws, p. 310, Section 3, Article 576, Rev. Stats., 1876. Article 652, Rev. Stats., 1895, permitted increase of capital stock only to double the amount of its authorized capital. It was held that an amendment to the charter under Article 571, Rev. Stats., 1876, Article 647, Rev. Stats., 1895 (Article 1133, ante) was subject to the same restriction, and invalid if it increased the stock beyond such limit. *Kampmann vs. Tarver*, 87 Texas, 491, 29 S. W., 768. But the limit appears to be removed by the present article, which is found in the Act of 1907.

Article 1146. *Watering Stock Prohibited; Forfeiture for Violation.*—No corporation, domestic or foreign, doing business in the State, shall issue any stock whatever, except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the company. Any corporation which violates the provisions of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from or by virtue of the laws of this State. (Id. Sec. 5; Constitution, Art. 12, Sec. 6.)

NOTE.—Stock being only authorized to issue for money paid to, property received by, or labor done for the corporation, money paid or services rendered previous to incorporation in promotion, sales of stock, and other preliminary expenses, can not be made the basis of corporate liability, much less of stock issues. *Weatherford etc. Ry. Co. vs. Granger*, 86 Texas, 350, 24 S. W., 795. Money paid means cash. It may be payable in installments; but stock can not be issued for money to be paid by subscriber "at such time as he could arrange." *San Antonio Irr. Co. vs. Deutschmann*, 102 Texas, 201, 114 S. W., 1174. The property must be of a substantial character, such as could be subjected to payment of claims against the corporation and secure stockholders in their rights; and an unpatented secret formula for a compound to prevent gasoline from exploding was not such property. *O'Bear-Nester Glass Co. vs. Anti-explo Co.*, 101 Texas, 431, 108 S. W., 967. It must be such as the corporation by its charter was authorized to hold. See opinion of Attorney General on *Blue Sky Law*, post p. 106. The labor performed must be labor for the corporation, not labor in its promotion. Neither can such promotion expenses, save in a few excepted particulars, attorneys fees, charter fees, franchise tax, etc., be paid out of the proceeds of sale of stock, as debts of the corporation. See "*Blue Sky Law*," by which these matters are fully regulated, post pp. 72-81. A contract by the promoter, which the corporation subsequently adopts, and of which it receives the benefit, may be made the basis of corporate liability; but not the promoter's services, before incorporation, in obtaining such contract. *Weatherford etc. Ry. Co. vs. Granger*, 86 Texas, 350, 24 S. W., 795. See, also, Article 1165, post.

A general statement of the rights of the promoter arising out of things done before incorporation may be made in these terms: For all property or rights which the corporation takes over from him for

its purposes, he may receive in stock their fair value at the time of incorporation. By this means he may get compensation for his services in acquiring, prospecting, developing, etc., so far as these have been fruitful in enhancing the value up to the time such property passes to the corporation. But these services and expenditures were rendered to himself, not to the corporation. It owes no debt for them; can not issue him stock for them; can not pay him for them out of the sale of stock to others. Of organization expenses incurred, a few (attorneys fees, charter and license fees, etc.) the corporation may pay out of its capital received from the sale of stock. As to all others it can not reimburse the promoters either by issuing them stock or paying them from sales of stock, at least such appears to be the construction of the act by the Attorney General. But as to this see note, post, on p. 108.

Article 1147. *Watered Stock and Bonds not for Money, Etc., Quo Warranto Suit to Cancel.*—Where any corporation has issued and has outstanding any stocks or bonds, given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, it shall be the duty of the Attorney General of this State, when convinced that the facts exist which authorize the action, to institute quo warranto or other appropriate judicial proceedings in some court of competent jurisdiction in Travis county, or in any other county of this State where such corporation may be sued, to have any stocks or bonds issued in violation of the Constitution and statutes of this State, canceled, expunged and held for naught; and, within the meaning of the above, is included any bond or stock given in renewal, or in lieu of any originally issued, for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stocks or bonds has merged or been consolidated and given by said issuing corporation, in the place of those originally issued for purposes other than as mentioned above. (Acts 1907, p. 342, Sec. 3.)

Article 1148. *Suit May be Dismissed or not Brought Under What Conditions.*—If any suit authorized under Article 1147 has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation

shall surrender, or cause to be surrendered, to the court or to the Railroad Commission of Texas, for destruction, all such illegal stocks complained of, and also the illegal bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. (Id., Sec. 4.)

Article 1149. *Remedies Cumulative.*—The rights and remedies given by the last two articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties. (Id., Sec. 6.)

Article 1150. *Increase in Certain Cases Validated.*—That in all cases where the amount of the capital stock of any corporation has heretofore been increased by more than one increase thereof to an amount in excess of double the amount of the original capital, and such increase has been made with the sanction of the Secretary of State, under his construction of the law, such increase shall be, and the same is hereby, validated and declared legal. (Acts 1893, p. 123.)

Article 1151. *Unpaid Increase of Stock Payable When; Forfeiture for Default.*—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the Secretary of State, the charter of such company shall be forfeited; and the provisions of Article 1145 of this chapter shall govern the same, as in case of an original creation of a corporation. (Acts 1907, p. 311, Sec. 3.)

Article 1152. *May Decrease Stock, How.*—A corporation may decrease its capital stock by such amount as its stockholders may decide by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase as above provided; but no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have

against the company, or any stockholder or director thereof; nor shall such decrease become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and the Secretary of State may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. (Id., Sec. 3.)

Article 1153. *Quorum of Directors and Annual Elections.*—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. (Id., Sec. 15. P. D., 5946.)

Article 1154. *President and Secretary to be Chosen.*—

The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. (Id., Sec. 16. P. D., 5947.)

Article 1155. *By-laws May be Adopted, Altered, Etc.*—

The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. (Id., Sec. 17. P. D., 5948.)

Article 1156. *May Increase Number of Directors or Trustees.*—All corporations heretofore created, and now in existence, under any law of this State, are hereby authorized to increase the number of directors or trustees of any such corporation. (Id., Sec. 18. P. D., 5949.)

Article 1157. *Failure to Elect Directors Shall Not Dissolve, Etc.*—In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such cor-

poration shall not, for that reason, be deemed to be dissolved; but it shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. (Id., Sec. 19. P. D., 5950.)

NOTE.—Failure to elect directors will not prevent recognition as a de facto corporation. *Conley vs. Daughters of Republic*, 151 S. W., 883.

Article 1159. *Directors Shall Have General Management, Etc.*—The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock, at any time remaining unsubscribed, in such manner as the by-laws may prescribe. (Id., Sec. 21. P. D., 5952.)

Article 1160. *Directors Shall Cause Record to be Kept, Etc.*—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions; and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. (Id., Sec. 21.)

Article 1161. *Shall Report to Stockholders and Make Dividends.*—They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. (Id., Sec. 21.)

Article 1162. *May Borrow Money.*—Corporations shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation. (Acts 1883, p. 98, Sec. 13. P. D., 5944.)

NOTE.—The corporation can issue bonds only for its own benefit, not for that of another. *North Side Railway Co. vs. Worthington*, 88 Texas, 562, 30 S. W., 1055. It may pledge its property for payment. *Pumphrey vs. Threadgill*, 9 Texas Civ. App., 184, 28 S. W., 450. And may pledge its bonds for borrowed money. *Western S. & M. Co.*

vs. U. S. & Mex. Trust Co., 41 Texas Civ. App., 478, 92 S. W., 986. It may issue bonds for property received. Thayer vs. Wathen, 17 Texas Civ. App., 382, 44 S. W., 906. And may sell its bonds at a discount. North Side Ry. Co. vs. Worthington, 88 Texas, 562, 30 S. W., 1055; Mathis vs. Pridham, 1 Texas Civ. App., 58, 20 S. W., 1015.

Article 1164. *Corporation Restricted to Objects of Its Creation.*—No corporation, domestic or foreign, doing business in this State, shall employ or use its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation or those permitted by law. (Acts 1907, p, 312, Sec. 5.)

Article 1165. *Restrictions Upon Creation of Debts.*—No corporation, domestic or foreign, doing business in this State, shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation. (Id.)

Article 1166. *Contributions to Political Parties or Candidates, Etc., By Corporation Officers, Etc., Forbidden.*—No corporation, domestic or foreign, doing business in the State shall, directly or indirectly, contribute or pay any part of its assets, property or funds to any political party, or to any officer or campaign manager of any political party, or to any person whatsoever, for or on account of such party, nor to any candidate for any office, before or after nominations are made, or to aid in defraying the expenses of any candidate for office, or to any person for or on account of aid in defraying the expenses of a candidate for office, or to any person whatsoever, for, or on account of aid in maintaining or defraying the expenses of any campaign or political headquarters, or to any person whatsoever, for or on account of the success or defeat of any question to be voted upon by the qualified voters of this State, or any subdivision thereof. (Acts 1907, p. 312, Sec. 5.)

Article 1167. *Penalty for Violation of Either of the Last Three Preceding Articles.*—Any corporation which

shall violate any of the provisions of either of the three last preceding articles, shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of, the laws of this State.

Whenever it appears that the money, assets, property, or funds of a corporation have been issued, paid out or used, in violation of any of the provisions of either of the three last preceding articles, by any agent, attorney, director, or officer of such corporation, it shall be held and considered the act of the corporation, unless, within one year from the date of such violation, it has caused to be entered through its board of directors on its records in this State, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violation. (Id., Sec. 5.)

Article 1168. *Stock of Corporation is Personal Estate.*—The stock of any corporation created under this title shall be deemed personal estate, and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. (Id., Sec. 24. P. D., 5955.)

Article 1169. *Directors May Require Payment of Stock.*—The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. (Id., Sec. 25. P. D., 5956.)

Article 1170. *Stock Forfeited, When and How.*—If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the post office nearest his usual place of residence, stating that he is required to make such payment

at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made. (Id., Sec. 26. P. D., 5957.)

Article 1171. *Corporation May Sue Its Own Members.*—All bodies corporate may sue for, recover and receive from, their respective members all arrears or other debts, dues or other demands which are now, or hereafter may be, owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. (Id., Sec. 27. P. D., 5958.)

Article 1172. *Misnomer Shall Not Vitate.*—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. (P. D., 5965.)

Article 1173. *Corporation May Convey Lands, How.*—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact, where the instrument constituting such attorney in fact is executed in said manner first mentioned; and such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds; and all conveyances by corporations heretofore executed in the manner herein set forth shall be held valid so far as regards the manner of execution. (Acts 1905, p. 230. P. D., 5966.)

Article 1174. *Principal Office Must Be Kept in State.*—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of the State, shall keep its principal office within this State. (P. D., 5962.)

CHAPTER IV.

LAND—ACQUISITION, ETC., OF, RESTRICTED.

Article 1175. *Purchase of Land, Unless Necessary to Business or to Secure Debts, Prohibited.*—No private corporation shall be permitted to purchase any land under the provisions of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business, to secure the payment of debt. (Acts 1893, p. 36. Acts 1897, p. 48.)

NOTE.—The right of the corporation to purchase and hold the land can only be questioned by the State. *Scott vs. Farmers and M. Natl. Bank*, 97 Texas, 57, 104 Am. St., 835, 75 S. W., 7; S. C. Civ. App., 66 S. W., 485; *Knowles vs. Northern Texas Trac. Co.*, 121 S. W., 232; *Schwab Cloth. Co. vs. Claunch*, 29 S. W., 922; *Ray vs. Foster*, 53 S. W., 54. But it can not compel the execution of a conveyance from a trustee of land it has no right to acquire. *Scott vs. Bank*, 66 S. W., 495. And lands acquired, but which it had no power to take and hold, may be subjected to claims of its creditors. *Bank vs. Construction Co.*, 138 S. W., 443.

Article 1176. *Excess of Land Over Necessary Amount to be Alienated, When.*—All private corporations authorized by the laws of Texas, as provided in Article 1121, to do business in this State, whose main purpose is not the acquisition or ownership of lands, as mentioned in preceding articles, which have, heretofore, or may hereafter, acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the time this law takes effect, or the date said land may be hereafter acquired, in good faith, sell and convey in fee simple all lands so acquired, and which are not necessary for the transaction of their business. (Id.)

CHAPTER V.

REPORTS BY CERTAIN CORPORATIONS.

Article 1182. *Certain Corporations to Make Reports to Secretary of State.*—Every corporation within this State owning, leasing or operating in this State, in cities or towns of over twenty-five hundred population, according to the last official census of the United States, a street railway, electric lighting or power plant furnishing light and power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually, on or before the first day of March of each year, file a report with the Secretary of State, upon blank forms to be furnished by the Secretary of State, showing the following facts:

1. The authorized capital stock of such corporation, the amount of such stock, that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, the rate of interest upon such bonds, and when such bonds mature, and the price at which such bonds were sold.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b) amount paid for labor; (c) fixed charges, including interest, taxes and insurance, giving each

separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, amount received for sewerage, for power, water, gas, amount received for street railway fares and tickets. (Acts 1905, p. 40, Sec. 1.)

Article 1183. *Same Subject.*—The corporations mentioned in Article 1182 shall also make to the Secretary of State, upon blanks to be furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if any such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. (Id., Sec. 2.)

Article 1184. *Reports to Be Under Oath, Etc.*—The reports provided for in Articles 1182 and 1183 shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. (Id., Sec. 3.)

Article 1185. *Copies of Reports to Be Filed With Mayor and With County Clerk, Recorded, Etc.*—A true copy of the reports required by the provisions of this chapter, sworn to as provided, shall be filed annually, on or before the first day of March of each year, with the mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true copy of said reports with the clerk of the county court of the county in which such corporation has its principal place of business; and the same shall be, by said clerk, delivered to the commissioners' court; and such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. (Id., Sec. 4.)

Article 1186. *Penalty.*—Any such corporation as described in Article 1182, which shall for thirty days willfully fail or refuse to file the reports in the manner provided by this chapter, shall forfeit and pay to the State one hundred dollars for each and every day during which it shall continue in default; which shall be recovered by suit in a court of competent jurisdiction by the Attorney General of the State of Texas. (Id., Sec. 5.)

NOTE.—For reports required of all corporations subject to the payment of an annual franchise tax, see post, Act of April 7, 1913, Laws, 33d Leg., Ch. 153, p. 327.

CHAPTER VIII.

LIABILITY OF STOCKHOLDERS AND DIRECTORS.

Article 1198. *When and How Stockholders May Be Made Liable on Execution.*—If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of stock unpaid; but no execution shall issue against any stockholders, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after a reasonable notice in writing to the person or persons sought to be charged; and, upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. P. D., 5960.

Article 1199. *Secretary Shall Furnish Names, Etc., of Stockholders to Plaintiff.*—The Secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against

the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation. (P. D., 5961.)

Article 1200. *Directors Liable for Debts of Corporation, When and to What Extent.*—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of declaring the dividend, or shall object thereto, at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from said liability. (Acts 1874, p. 120. Acts 1871, 2 S. S., p. 66. Acts 1893, p. 123. P. D., 5959.)

CHAPTER X.

DISSOLUTION OF PRIVATE CORPORATIONS.

Article 1205. *Corporation is Dissolved, How.*—A corporation is dissolved:

1. By expiration of the time limit in its charter.
2. By a judgment of dissolution rendered by a court of competent jurisdiction.
3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time, place and object of the meeting, served personally, or by mail, at

least thirty days next before the meeting. If, at said meeting, four-fifths in interest of all the stockholders of said company shall signify their consent in writing to the dissolution of the corporation, such consent in writing, together with a list of the directors and officers of the company, giving the postoffice address and place of residence of each, certified by the president and secretary and treasurer as true and correct action of the stockholders, shall be filed with the Secretary of State; or when, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the Secretary of State. When any such certificate as above mentioned is filed with the Secretary of State, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office. (Acts 1907, p. 311, Sec. 4. P. D., 5968.)

4. A corporation is dissolved whenever, under any special provision of law, its charter is forfeited without judicial ascertainment.

5. Where a corporation created under this title or a general law of this State shall fail to commence active operations within three years after filing its charter with the Secretary of State, its charter is hereby forfeited, and the corporation is dissolved. (P. D., 5969.)

6. Whenever a corporation upon proper judicial ascertainment is found to be insolvent.

Article 1206. *Unless Receiver Appointed, President, Etc., to Be Trustees, and Close Business.*—Upon the dissolution of any corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such cor-

poration at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and to this end, and for this purpose they may, in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and to exercise the full power and authority of said company over such assets and properties; and the existence of every corporation may be continued for three years after its dissolution from whatever cause for the purpose of enabling those charged with the duty to settle up its affairs; and, in case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the court so long as in its discretion it is necessary to suitably settle up the affairs of such corporation. (Id., Sec. 7.)

Article 1207. *Trustees Responsible to Creditors, Etc., to What Extent.*—The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. (P. D., 5971.)

Article 1208. *Liability of Stockholders to Creditors and to Each Other.*—If any corporation created under this title or any general statute of this State, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable; and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency

shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved. (P. D., 5972.)

Article 1209. *Stockholder May Compel Contribution.*—If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action. (P. D., 5973.)

Article 1210. *Only Liable for Unpaid Stock.*—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock. (P. D., 5974.)

Article 1211. *Members or Officers of Defunct Corporation Not to Do Business Under Old Corporate Name, Etc.*—When any charter or permit heretofore or hereafter granted under the laws of the State of Texas to any corporation to do business in said State shall have been forfeited, it shall be unlawful for any persons who were members or officers of said defunct corporation at the time of such forfeiture to do business in Texas under the old corporate name of such corporation, or to use the same or like signs or advertisements which were used by such corporation before such forfeiture. (Acts 1905, p. 335.)

CHAPTER XXI.

GAS AND WATER CORPORATIONS.

Article 1282. *Privileges of Such Corporations.*—Any gas or water corporation shall have full power to manufacture and sell and to furnish such quantities of water or gas as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting gas or water through the streets, alleys, lanes and squares in such city, town or village, with the consent of the municipal authorities thereof, and under such regulations as they may prescribe. (P. D., 5992.)

Article 1283. *May Contract with Cities, Etc.*—The municipal authorities of any city, town or village, in which any gas, light or water corporation shall exist, are hereby authorized to contract with any such corporation for the lighting or supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. (P. D., 5993.)

CHAPTER XXIV.

OIL, GAS, SALT, ETC., COMPANIES.

Article 1303. *How Corporation May be Formed.*—Any number of persons, not less than three, may organize themselves into a corporation for the purpose of storing, transporting, buying and selling of oil and gas, salt, brine and other mineral solutions in this State. (Acts 1899, p. 202, Sec. 1.)

Article 1304. *Same Subject.*—The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations in Chapter 2 of this title, and the provisions of this chapter shall apply to all corporations already organized for any of the purposes of this chapter. (Id., Sec. 2.)

Article 1305. *Powers of Corporation.*—Such corporations shall have power to store and transport oil and gas, brine and other mineral solutions, and to make reasonable charges therefor; to buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses, and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this State; to own, hold, use and occupy such lands, rights of way, easements, franchises, buildings and structures as may be necessary to the purpose of such corporation. (Id., Sec. 3.)

NOTE.—The powers of a corporation created under Article 1303 are further enlarged by the Act of March 6, 1915, Laws, 34th Leg., p. 82. The Act is given in full, pp. 43, 44, post.

Article 1306. *Right of Condemnation.*—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to lay its pipes and pipe lines across and under any public road or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this State, with the consent and under the direction of the board of aldermen or city council of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads; provided, that such pipe or pipe lines shall not pass through or under any cemetery, church or college, schoolhouse, residence, business or store house, or through or under any building in this State, except by the consent of the owner or owners thereof; and provided, further, that all such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owner or owners of such land; provided, further, that if such pipes or pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as hereinbefore provided, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof; and provided, further, that whenever such pipes or pipe line shall cross any public road or highway, railroad, street railroad, or street or alley, the said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof;

and provided, further, that such pipe lines so laid shall not exceed eight inches in diameter. (Id., Sec. 4.)

NOTE.—A pipe line company is liable for damages caused by oil escaping from its pipes and contaminating the water of a creek, whereby cattle drinking therefrom were killed, and this irrespective of negligence in permitting such escape. But the court would not judicially recognize that petroleum was poisonous and liable to produce such result. *Texas Co. vs. Earles*, 164 S. W., 28.

Article 1307. *Right to Borrow Money, Issue Stock, Mortgage Franchises, Etc.*—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State, wherever the same may be applicable to corporations of this character. (Id., Sec. 5.)

Article 1308. *Discrimination Unlawful.*—It shall be unlawful for any corporation organized under this chapter to discriminate against any person, corporation, firm, association, or place in the charge for such storage or transportation, or in the service rendered, but shall receive, store or transfer oil or gas for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms, or associations for like service. (Id., Sec. 6.)

GENERAL LAWS, 34TH LEG., P. 82.

S. S. B. No. 78.]

CHAPTER 41.

An Act providing for the enlargement of the powers of corporations organized under Chapter 24, of Title 25, of the Revised Civil Statutes of 1911, for the purpose of storing, transporting, buying and selling oil and gas, salt, brine and other mineral solutions in this State, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Corporations heretofore or hereafter organized under the provisions of Chapter XXIV of Title 25

of the Revised Civil Statutes of 1911, and which shall file with the Secretary of State a duly authorized acceptance of the provisions of this Act, are hereby declared to have, in addition to the powers enumerated in said chapter, the power to carry on the business therein authorized outside of as well as within this state; to own and operate refineries, casing and treating plants, sales offices, warehouses, docks, ships, tank cars and vehicles necessary in the conduct of their business; and to cause the formation of corporations outside of this state, not exceeding one in any state, territory or foreign country, whose purposes and powers exercised shall be only those conferred by law upon the forming or holding corporation as incorporated under the laws of Texas and own and hold the stock of such corporations when the effect of such formation or stock holding is not substantially to lessen competition or otherwise to violate laws prohibiting trusts and monopolies and conspiracies in restraint of trade.

SEC. 2, The present condition of the law on this subject and the importance of the change herein contemplated creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be and the same is hereby suspended, and that this Act become a law from and after its passage, and it is so enacted.

[NOTE.—S. S. B. No. 78 passed Senate by vote of 20 yeas, 4 nays, February 19, 1915. Passed House by vote of 88 yeas, 37 nays, March 4, 1915.]

Approved March 6, 1915.

Takes effect 90 days after adjournment.

CORPORATIONS FOR GENERATING, TRANSPORTING AND
SELLING GAS, ETC.

(Act of March 25, 1911, Laws, 32d Leg., p. 228.)

SECTION 1. That any number of persons, not less than three, may organize themselves into a corporation for the purpose of generating, manufacturing, transporting and selling gas, electric current and power in this State.

SEC. 2. The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations under Chapter 2, Title 21, of the Revised Civil Statutes of the State.

SEC. 3. Such corporation shall have the power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold, and use such lands, rights of way, easements, franchises, buildings and structures as may be necessary for the purpose of such corporation.

SEC. 4. Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right of way, interurban railroad, street railroad, canal or stream in this State, and any street or alley of any incorporated city or town in this State, with the consent and under the direction of the governing board of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads, pipe lines, telephone and telegraph lines; provided, that such lines shall be constructed upon suitable

poles in the most approved manner and maintained at a height above the ground at least twenty-two (22) feet; or pipes may be placed under the ground as the exigencies of the case may require.

SEC. 5. Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes by such corporation, and shall possess all the rights and powers of corporations for profit in this State, wherever the same may be applicable to corporations of this character.

SEC. 6. It shall be unlawful for any corporation organized under this act to discriminate against any person, corporation, firm, association or place in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances. (Acts 32nd Leg., p. 228.)

NOTE.—It is held by the Attorney General, that "gas" in this statute includes natural gas. That "it was the intention of the Legislature to authorize the creation of a single corporation with the triple right to produce gas, transport it through the country from the point of production to the place of market, and then sell it to the public." That "the liberation of natural gas from the earth" is to produce or "generate" it, and is included in the powers conferred by Section 2.

The opinion also suggests a form for the purpose clause in the charter of a corporation under this Act which it would be well to follow. It is given in the accompanying forms, No. III. See report of Attorney General for years 1912-1914, p. 287.

[Rev. Stats., 1911, Continued.]

CHAPTER XXVI.

FOREIGN CORPORATIONS.

Article 1314. *Permit to Do Business, Etc., in State Must be Obtained, and How.*—Hereafter, any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this State,

or solicit business in this State, or establish a general or special office in this State, shall be, and the same is hereby, required to file with the Secretary of State a duly certified copy of its articles of incorporation; and, thereupon, the Secretary of State shall issue to such corporation a permit to transact business in this State. (Acts 1897, p. 167.)

May be Limited to One or More Purposes.—If such corporation is created for more than one purpose, the permit may be limited to one or more purposes. (Id.)

Showing as to Stock by Foreign Corporations.—Provided, that foreign corporations obtaining permits to do business in this State shall show to the satisfaction of the Secretary of State that at least one hundred thousand dollars, in cash, of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent of the authorized capital has been paid in, before such permit is issued. (Acts 1901, pp. 18-19.)

Article 1315. *Permit to Do Business, Affidavit As Condition of Issuance; Requisites of.*—As a condition precedent to the issuance by the Secretary of State of a permit to any foreign corporation, authorizing it to do business in this State, the president, vice-president, secretary, or treasurer, or two of the directors of such corporation, shall make and subscribe an affidavit in writing stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind or character whatsoever, which would constitute a violation of any anti-trust law of the State existing at the date of such affidavit, and has not, within that time, entered into, or been in anywise a party to, any combination in restraint of trade, within the United States of America, and that no officer of such corporation has, within the knowledge of affiant, within twelve months next preceding the date of such affidavit, made, on behalf of such corporation or for its benefit any

such contract, or entered into, or become a party to, any such combination in restraint of trade. Such affidavit in writing shall be personally subscribed and sworn to by such affiant or affiants before some officer who is by law duly authorized to administer oaths, and the jurat of such officer shall be attested by his official signature and seal of office; and such affidavit in writing so attested shall be filed in the office of the Secretary of State before the issuance of any such permit. (Acts 1909, S. S., pp. 267-8. *Id.*)

Article 1316. *Secretary of State to Require Proof in What Case.*—It shall be the duty of the Secretary of State to require satisfactory proof as to the amount of capital actually invested in this State before issuing any permit to any foreign building and loan company to do business in this State. (*Id.*, p. 267.)

Article 1317. *Rights Under Permit.*—Such corporation, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State. (Acts 1897, p. 167.)

Article 1317a. *Right to Purchase, Hold, Sell, Mortgage, Etc., Real and Personal Estate; Provisions as to Alienation.*—Such corporations, under such permits, shall be authorized and empowered to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also, to take, hold, and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire, in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation; provided, that, if such corporation so obtaining a permit to do business in this State, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition, and provided, further, that such corporation shall alienate all real estate acquired by it for the purposes

of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed, or such corporation be otherwise authorized to carry on business in this State, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this State; and provided, further, that if such corporation shall cease to carry on business in this State, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall cease to carry on business in this State. (Id.)

Article 1318. *No such Corporation Can Maintain Any Suit, Unless.*—No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the Secretary of State for the purpose of procuring its permit. (Id.)

Article 1319. *Corporations Exempted from Provisions Hereof.*—The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the Commissioner of Insurance and Banking. (Id.)

Article 1320. *Permit to Extend for Period of Ten Years.*—No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the Secretary of State. (Id.)

Article 1321. *Evidence.*—Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no

particular complied with the requirements of this chapter. (Id.)

NOTE.—To “transact business” in the State does not imply the carrying on of its main business here. A single and isolated transaction, such as the erection of an industrial plant, including labor and materials, is distinguishable from the mere sale by the foreign corporation of the machinery used and set up therein. The latter would constitute interstate commerce, for which no permit would be necessary; the former a transaction of business for which a permit must be obtained. *S. R. Smythe Co. vs. Ft. Worth Glass & S. Co.*, 105 Texas, 8, 142 S. W., 1157.

The State may prescribe the conditions under which a foreign corporation may do business in the State, having the power absolutely to exclude it; and it may tax the privilege. *Gaar, Scott & Co. vs. Shannon*, 52 Texas Civ. App., 634, 115 S. W., 361; *Cont. Oil Co. vs. Van Winkle Gin Co.*, 131 S. W., 415. But the statute can not be made to apply to transactions constituting interstate or foreign commerce. *Miller & Co. vs. Goodman*, 91 Texas, 41, 40 S. W., 718; *T. & P. Ry. Co. vs. Davis*, 93 Texas, 378, 54 S. W., 381; *DeWitt vs. Berger Mfg. Co.*, 81 S. W., 334; *Geiser Mfg. Co. vs. Gray*, 126 S. W., 610; *Allen vs. Tyson-Jones Buggy Co.*, 91 Texas, 22, 40 S. W., 393; *Lasater vs. Purcell M. etc. Co.*, 22 Texas Civ. App., 33, 54 S. W., 425; *Pasteur Vaccine Co vs. Burkey*, 22 Texas Civ. App., 232, 54 S. W., 804; *Gale Mfg. Co. vs. Finkelstein*, 22 Texas Civ. App., 241, 54 S. W., 619. Such corporations, without permit, may sue for debts or for the recovery of property, provided the right arose otherwise than from the transaction in the State of business which was not interstate commerce. *Security Co. vs. Panhandle Co.*, 93 Texas, 575, 57 S. W., 22; *Brown vs. Guaranty Sav. L. & Inv. Co.*, (sale of corporate stock and loan of money thereon) 102 S. W., 138; *Norton vs. Thomas & Sons*, 93 S. W., 711; *Lake View Land Co. vs. San Antonio Trac. Co.*, 95 Texas, 252, 66 S. W., 766; *Mansur etc. Imp. Co. vs. Beer*, 19 Texas Civ. App., 311, 45 S. W., 972; *Gale Mfg. Co. vs. Finkelstein*, 22 Texas Civ. App., 241, 54 S. W., 619.

ACT OF APRIL 7, 1913.

Corporations.—Requires annual reports to be made between first day of January and first day of February.

H. B. No. 578.

CHAPTER 153.

An Act to require all corporations that are required by law to pay an annual franchise tax to make a report to the Secretary of State between the first day of January and the first day of February,

and prescribing what the report shall contain; prescribing penalties for failure to make such report, and providing such reports shall only be subject to inspection by parties who are interested directly in the subject matter of such reports, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. All corporations that are now required by law to pay an annual franchise tax, shall, between the first day of January and the first day of February of each and every year, be required to make a report to the Secretary of State, on blanks furnished by him, which report shall give the authorized capital stock of the corporation, the capital stock issued and outstanding, the surplus and undivided profits of the corporation, the names and addresses of all the officers and directors of the corporation, the amount of mortgages, bonded or other indebtedness of each corporation, and the amount of the last annual, semi-annual or quarterly dividend. If the capital stock issued and outstanding plus the surplus and undivided profits shall exceed the authorized capital stock, the franchise tax shall be based on this amount instead of the authorized capital, but if it shall be less, then the franchise tax shall be based on the amount of capital stock, but no corporation shall be required to pay a greater rate of franchise tax by reason of its having a surplus than a corporation that has no surplus.

SEC. 2. Any corporation which shall fail or refuse to make the report as provided in Section 1 hereof, shall be subject to a fine of ten dollars for each and every day after the first day of February that they shall fail to make such report. The Attorney General of the State is hereby empowered and directed to bring suit against such corporation in either of the district courts of Travis county, in the name of the State of Texas for the collection of such penalties that may be due by reason of such failure.

SEC. 3. The reports required by this act shall be deemed to be privileged and not for the inspection of the general public, but any party or parties who are in-

terested in the subject matter of any report, may, upon valid request in writing made to the Secretary of State, secure a copy of same.

SEC. 4. The following officers of each and every corporation shall be deemed competent to make the report required by this act: The president, vice-president, secretary, treasurer or general manager, and all reports provided for in this act shall be signed officially and sworn to before some officer authorized by law to administer oaths.

SEC. 5. All laws and parts of laws in conflict with this act are hereby repealed, but where this act is not in conflict with any existing law, it shall be held to be amendatory thereof. (Acts 33rd Leg., p. 327.)

[Rev. Stats., 1911, Continued.]

Title 58.

CHAPTER I.

FEES OF OFFICE.

2. SECRETARY OF STATE.

Article 3837. *Fees of State Department.*—The Secretary of State, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the State the following fees: [Provisions relating to certain classes of corporations omitted.]

For each and every charter, amendment or supplement thereto, of a private corporation created for any other purpose, intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed; provided, that, if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock, or fractional part thereof, after the first.

For each foreign corporation obtaining permit to do business in this State shall pay fees as follows: Fifty dollars for the first ten thousand dollars of its author-

ized capital stock, and ten dollars for each additional ten thousand dollars, or fractional part thereof; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph line in this State, shall in no event exceed ten thousand dollars; provided, however, that mutual building and loan companies, so called, whose stock is not permanent, but withdrawable, shall pay a fee of fifty dollars for the first one hundred thousand dollars, or a fractional part thereof, of its authorized capital stock, and ten dollars for each additional one hundred thousand dollars, or a fractional part thereof; and where the company is a foreign one, then the fee shall be based upon the capital invested in the State of Texas. (Acts 1907, S. S., p. 500. Acts 1905, p. 135. Acts 1889, p. 93. Acts 1889, p. 87. Acts 1883, p. 72. Acts 1909, S. S., p. 267.)

Article 3838. *Minimum Fees in Certain Cases.*—The minimum fee for any foreign building and loan company shall be two hundred and fifty dollars; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed one thousand dollars. (Id.)

Article 3839. *Pending Suit Not Affected.*—Nothing in this chapter, nor in Articles 1315 and 1316, shall in anywise affect any suit now pending in the name, or in behalf of, the State of Texas, as against any foreign corporation. (Id.)

Article 3840. *Fees Paid in Advance to Secretary and by Him to Treasury Monthly.*—All fees mentioned in Articles 3837 and 3838 shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly. (Id.)

Title 93.

MINES AND MINING.

CHAPTER I.

Article 5904. (3498a) *Reserved Lands Opened to Exploration and Purchase, Etc.*—All public school, university, asylum and public lands specially included under the operation of this title, all the lands now owned by the State situated within the reservation known as the "Pacific Reservation," which were taken off the market and reserved from sale by an act approved January 22, 1883, containing valuable mineral deposits, are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, by citizens of the United States and those who have declared their intention of becoming such. (Act 1895, p. 197.)

Article 5905. (3498c) *Mining District Created.*—It shall be the duty of the Commissioner of the General Land Office in all lands designated as mineral lands to unite a suitable number of mineral locations into mining districts, in each of which shall be a surveyor, who must either be the surveyor of the district or county or a regular appointed deputy and an officer qualified to administer oaths. (Id.)

Article 5906. (3498d) *Mining Claims Limited, Etc.*—A mining claim upon veins or lodes of quartz or other rocks in place bearing silver, gold, cinnabar, lead, tin, copper and other valuable metals, excluding deposits of kaolin, baryta, salt, marble, fire clay,, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marls, natural cement, clays, onyx, mica, precious stones, or any other non-metallic mineral, and stone valuable for ornamental or building purposes, or other valuable building material, may equal but shall not exceed one thousand five hundred feet along the mine or vein or lode.

No such claim shall exceed twenty-one acres in total area. The end lines of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square, unless such form is prevented by adjoining rights or boundaries of the section in which the claim lies. The locator under this title shall be entitled to the use of all the superficial area between the inclosing lines of the claim, and to all minerals thereon and between the side and the end lines, extending downward vertically, until the rights secured by posting are forfeited as provided; and in all conflicts priority of location shall decide. (Id.)

Article 5907. (3498e) *Locator to Post Claim.*—The locaters of any mining claim shall post up at the center of one of the end lines of the same a written notice, stating the name of the location and of the claim and date of posting, and describe the claim by giving the number of feet in length and width and the direction the claim lies in length from the notice, together with the section, if known, and the county, and shall place stone monuments at the four corners and otherwise describe the corners so that they can be readily found. The notice shall be placed in a conspicuous place so it can be readily seen. (Id.)

Article 5908. (3498f) *Application for Survey of Claim, Requisites of.*—The locator shall, within three months after the date of posting the required notice, file with the county surveyor of the county in which the land, or a part thereof, is situated an application in writing for the survey of the claim, giving the name of the claim and such designation of its boundaries and location as to enable the surveyor to identify the land. The application shall be accompanied by a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the applicant has found valuable minerals, stating the kind, on the claim, also the date of the first posting of the notice on the claim by the applicant and that the notice has not been post-dated nor changed in its date. Upon receiving the application and affidavit and fee, the surveyor shall record the application and affida-

vit and shall forthwith proceed to survey the claim. After the field-notes are recorded and a plat of the survey is made by the surveyor, he shall deliver the application and affidavit, together with the field-notes and plat, to the applicant or his agent, who shall forward same to the Commissioner of the General Land Office with one dollar as a filing fee. When the applicant forwards the papers aforesaid to the Commissioner, he shall at the same time forward to the State Treasurer one-fifth of the aggregate price of the land as the first payment thereon. The applicant shall also file in the Land Office with his other papers his obligation to the State for the remaining unpaid purchase money, binding himself to pay to the State of Texas, at the State Treasury in Austin, Texas, one-fifth of the unpaid purchase price, together with four per cent interest annually after the date of the filing of said papers in the Land Office, and until the entire purchase price and interest are fully paid. The papers aforesaid shall be filed in the Land Office within sixty days from the date the application was filed with the county surveyor, and not thereafter. The fee of twenty dollars shall cover all charges by the surveyor in connection with any one claim. A claim filed on under this title for gold, silver, cinnabar, lead, tin or copper, zinc, tungsten, molybdenum and uranium, may be paid out in full at any time within five years from the date the papers were filed in the Land Office. All mineral lands shall be sold at such price as may be fixed by the Land Commissioner, but in no event shall the same be sold at a price less than twenty-five dollars per acre, nor until he has ascertained approximately their value, provided, that no person, firm or corporation, or association of persons shall be permitted to locate or file on more than five claims of twenty-one acres within a radius of five miles. This article shall apply only to the claims filed on land containing the minerals herein named. (Id. Amended Act 1905, Laws 29th Leg., p. 148.)

Article 5909. 3498g. *Claimant Must Do What Pending Patent.*—Upon the failure of any one of the several owners to contribute his proportion of the expenditure

required in this title within the necessary time, the co-owner or co-owners who have paid the fees, or interest or principal, may, at the expiration of the time in which the payment was to be made and was so made by him, give notice in writing to such defaulting co-owner, or give such notice by publication in a newspaper published in the county where the claim is, if any, if none in such county, then in the newspaper published nearest the mining claim, for at least once a week for ninety days. If, after such personal notice in writing, or by publication, such delinquent shall fail or refuse to contribute his proportion of the expenditure required, his interest in the claim shall cease beyond the amount which he may have previously expended, thereon, and become the property of his co-owners who may have made the required expenditures. An affidavit of the co-owners of the facts, accompanied with the notice given, shall, when recorded in the proper county surveyor's office, be sufficient evidence of such delinquency and forfeiture in all interest in such claim. If patent shall be applied for on such claim, it shall be issued to the owners, if the proper evidence of forfeiture of such interest be filed in the Land Office. This article shall apply only to the claims filed on land containing the minerals named in the preceding article. (Id. Amended Act 1905, Laws 29th Leg., p. 148.)

Article 5910. 3498h. *Rights Accruing to the Claimant.*—When a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within two thousand feet of the surface of such claim on the line thereof, not previously known to exist, discovered in such tunnel to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work in the tunnel for six months shall be considered as

an abandonment of the right of all undiscovered veins on the line of said tunnel. (Acts 1895, p. 197.)

Article 5911. (3498i.) *Conditions Precedent to Issue of Patent.*—Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the Commissioner of the General Land Office, accompanied by the receipt of the State Treasurer showing that twenty-five dollars per acre has been paid by the applicant for patent to the State Treasurer. Whereupon such patent shall issue, unless protest is filed as hereinafter provided for in Article 5913. (Id.)

Article 5912. (3498j) *Right of Purchase.*—Within twelve months after the filing of the affidavit hereinafter provided for, any person or association of persons, qualified as required by Article 5904, shall have the right to purchase and obtain patent by compliance with this title of any of the lands of the State which are specified or included in Article 5904, containing valuable deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marl, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral and stones valuable for ornamental or building purposes, or other valuable building material, in legal subdivisions, in quantity not exceeding one section; provided, that where any such parties shall have heretofore expended, or shall hereafter expend, five thousand dollars in developing the aforesaid mineral resources of any of said lands, such party shall have the right to buy one additional section and no more, and to include in the purchase any section, or part thereof, on which the work may have been done. The land so purchased may be in different sections, and all embraced in one or more obligations, not to exceed the quantity stated. The purchaser shall pay not less than fifteen dollars per acre where the land shall be situated ten miles or less of any railroad in operation, and not less than ten dollars per acre where the land is over ten miles from such rail-

road, one-tenth of the purchase money to be paid in cash to the State Treasurer on or before the expiration of the twelve months aforesaid; and the purchaser shall file the Treasurer's receipt with the Commissioner of the General Land Office, together with an obligation to pay the State of Texas the remainder in nine equal annual installments, with interest at four per cent per annum from date, subject to forfeiture as in other cases; and all said lands are reserved from sale or other disposition than under this title; and where application is made to buy any of the lands herein named, except under this title, the purchaser shall swear that there are none of the minerals named in this title on said lands, so far as he knows, or has reason to believe, or does believe; provided, further, that this article shall not authorize the sale of lands containing valuable deposits of gold, silver, lead, cinnabar, copper or other valuable metal; provided, further, that any person desiring to acquire any lands under the provisions of this article shall have the right to prospect said land for a period of twelve months before making any payment thereon, upon condition that said prospector shall file with the proper surveyor his affidavit in writing, setting forth that he has gone upon the land in good faith with the intention of purchasing the same under the provisions of this article, and in said affidavit, give a reasonable description of the land. After the filing of said affidavit, the said surveyor shall immediately forward same to the Commissioner of the General Land Office, who shall take said section off the market until the expiration of said twelve months after the filing of said affidavit with the surveyor. (Id.)

NOTE.—The application to purchase mineral lands under this article must point out with reasonable certainty the land sought to be purchased. Where it designated parts of different sections, aggregating more than the applicant was entitled to purchase, and applied for "all or any of these lands," the application was properly rejected. *Brown vs. Robison*, 103 Texas, 551, 131 S. W., 401. An applicant is entitled by compliance with this Act, making known to the Commissioner that the lands are mineral bearing, to purchase them as

such under the law, though they were classified as agricultural or grazing lands. The Commissioner could determine the fact that they were mineral bearing and sell them as such, independent of the classification. *Colquitt-Tigner Min. Co. vs. Rogan*, 95 Texas, 452, 68 S. W., 154. As to the right of the Commissioner to require relinquishment of mineral rights from one applying to purchase as dry grazing land a survey so classified, see *Thaxton vs. Terrell*, 99 Texas, 562; *Schendell vs. Rogan*, 94 Texas, 585. As to purchase as grazing land of surveys classified as mineral bearing, see, *Camp vs. Smith*, 166 S. W., 22.

Article 5913. (3498k) *Contest of Patent*.—Any person desiring to contest the issue of patent may do so by filing with the Commissioner of the General Land Office a protest setting forth the grounds of objection generally, and that protestant has an interest in the subject matter; which protest shall also state that the same is presented in good faith and not to injure or delay the applicants, or any of them, and the same shall be verified by affidavit. Whereupon it shall be the duty of the Commissioner to withhold patent until the controversy is ended; provided, that, if the protestant shall not, within thirty days after filing his protest, institute suit in the court having jurisdiction thereof in the county where the claims are located, his protest shall constitute no further barrier to the issuance of patent. A certified copy of the petition, or a certificate of the clerk of the court where suit is pending, shall be sufficient evidence to the Commissioner of the pendency of the suit, and of the filing of said suit. When the land in controversy lies partly in two counties, suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket. (Id.)

Article 5914. (3492) *Location on Land Disposed of Since April 14, 1883*.—When a location has been made and land disposed of by the State since the passage of the Act of 1883, for disposition of minerals on the land embraced in Article 5904 of this title, if such location was made subsequent to the disposition by the State of such lands, and the locator or his assignees have not abandoned

said claim, but are working it in good faith, the locator and his assignees shall nevertheless be entitled to the use of the mineral and to the superficial area as in other cases; and, if the case is such that the fee in the land can not pass by patent, a patent may issue to all the minerals in the claims, and shall be license from the State to enter upon and work said claim and extract the mineral therefrom. In cases provided for in this article when the fee does not pass, the price shall be twenty dollars per acre, and the locator, or his assignee, shall in addition pay to the owner of the land in fee the fair value of the land so taken up by his claim, and roads and fences necessary to give him ingress and egress thereto, and be liable for any damages which may result to the owner of the land in fee. All other provisions of this title shall apply to said location. (Id.)

Article 5915. (3498) *Forfeiture of Claims*.—If the application and affidavit provided for in Article 5908 are not filed with the proper county surveyor within ninety days from the date of the first posting, and if the application, affidavit, field-notes, filing fee and obligation are not filed in the Land Office, or the first payment is not paid to the State Treasurer, within sixty days as required in Article 5908, the file and claim thereunder shall be void. If any part of an annual interest, or any part of an annual payment of principal, remains unpaid for thirty days after it becomes due on any claim, such claims shall be subject to forfeiture by the Commissioner of the General Land Office by an indorsement on the obligation, "Forfeited," signed officially by him, and thereupon all payments shall also be forfeited to the fund to which the land originally belonged. All forfeited claims may be reinstated upon written request of one or more owners filed in the Land Office and payment of all interest and principal due; provided, no rights of another has not intervened at date of filing said request in the Land Office. One interested in a claim at the time it was forfeited shall not be eligible to re-locate or re-file upon the same land for himself or on behalf of any other person, and

any such location or attempt to locate by such person shall be wholly void. Whenever any land theretofore covered by a forfeited claim shall be re-located, the locator or locators and each of them shall make an affidavit that the location is made without any contract or agreement or understanding of any kind; that none of the parties theretofore owning an interest in the forfeited claim before the re-location have or is to have any interest in the same under the new location. In all other cases where an affidavit is required by this title, it may be made by one or more of the parties cognizant of the facts. This article shall apply only to claims on land containing the minerals named in Article 5908. (Id. Amended Act 1905, Laws 29th Leg., p. 148.)

Article 5916. (3498n) *Applicant to Make Oath.*—Whenever an application shall be made to buy or obtain title to any of the lands embraced in Article 5914, 5904, except where the application is made under this title, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the minerals embraced in this title thereon; and, when the Commissioner has any doubt in relation to the matter, he shall forbear action until he is satisfied. Any such sale or disposition of said lands shall be understood to be, with the reservation of the minerals thereon; to be subject to location as herein provided. (Acts 1895, p. 197.)

NOTE.—A purchaser of lands classed as agricultural or grazing, and not known to contain minerals, is not required to file this affidavit. *Schendell vs. Rogan*, 94 Texas, 585.

Article 5917. (3498o) *Placer Claims Subject to Location.*—Claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions; and no such location shall include more than forty acres for each individual

claims
acres
shall
dollar
before
Ar
Adjo
cont
of s
non-
chic
and
sam
are
no
for
th
of
in
s

claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided. (Id.)

Article 5918. (3498p) *Application May Embrace Non-Adjacent Non-Mineral Land.*—Where non-mineral land not contiguous to the vein or lode is issued by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for a mill site, as provided in this section. (Id.)

Article 5919. (3498q) *Purposes for Which Timber May be Felled.*—Any owner or worker of mining claim under this title is authorized to fell and remove for building and mining purposes any timber or any tree growing or being upon unoccupied lands as described in Article 5914, 5904, said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes. (Id.)

Article 5920. (3498r) *Vested Rights Not Affected.*—Nothing in this title shall ever be so construed as to either destroy, invalidate or impair any valid claim, right or interest existing in, to or concerning any lands whatever at the passage of this title, of any pre-emptor, purchaser, actual settler, locator or other person whatsoever. (Id.)

Article 5921. (3498s) *Proceeds Appropriated.*—The net proceeds of all sales of mining lands under the provisions of this title shall inure to the benefit of the State and the respective funds for which the lands mentioned

in Article 5914, 5904 are set apart under the constitution and laws of the State; and it shall be the duty of the Comptroller, State Treasurer and Commissioner of the General Land Office to see to it and have said proceeds so paid rightly placed to the credit of the particular and proper fund.

Article 5922. (3498t) *Surveyors to Administer Oaths.*—For the purpose of effectually carrying out the provisions of this title, all county or district surveyors are hereby specially authorized and empowered to administer oaths, take affidavits and make certificates thereof.

NOTE.—The foregoing articles of the Revised Statutes, 5904-5922, constitute Chapter 1 of Title 93, relating to Mines and Mining. Chapter 2 of this title relates to the duties of the State Mining Board and to coal mining regulations, and is omitted as inapplicable to mining operations for petroleum and gas, which are conducted by boring. The regulation of such wells is by Title 134, on the subject "Wells—Oil, Gas, and Water," Articles 7847-7854, post.

Title 126.

TAXATION.

CHAPTER III.

FRANCHISE TAX.

Article 7393. *Tax to Be Paid by Domestic Corporations.*—Except as herein provided, each and every private domestic corporation heretofore chartered, or that may hereafter be chartered, under the laws of this State, shall on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following, which shall be computed as follows, viz: Fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation, unless the total amount of capital stock of such corporation issued and outstanding, plus its surplus and undivided profits, shall exceed its authorized capital stock;

and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporation issued and outstanding, plus its surplus and undivided profits; provided, that such franchise tax shall not in any case be less than ten dollars; provided, that, where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and for each additional one thousand dollars, in excess of one million dollars, it shall be twenty-five cents. (Act 1907, p. 503, Sec. 1.)

Article 7395. *Only Part of Tax to Be Paid, When.*—Whenever a private domestic corporation is chartered in this State, and whenever a foreign corporation is authorized to do business in this State, and such corporation shall be required to pay in advance to the Secretary of State, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May next following, bears to a calendar year. (Id., Sec. 3.)

Article 7396. *Certain Affidavits May Be Required.*—For the purpose of determining the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also for the purpose of determining the correctness of any report which is provided for in this chapter, the Secretary of State may, whenever he may deem it necessary or proper to protect the interests of the State, require any one or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit or affidavits in writing, which shall be subscribed by such officer, and by him sworn to before some officer who is by law duly authorized to administer oaths, and verified by his

seal of office, setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. (Id., Sec. 4.)

Article 7397. *Reports to Be Filed, Etc.*—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this State, the president, vice-president, general manager, secretary, treasurer and superintendent of each and every domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the Secretary of State to do so, report to the Secretary of State, in writing, and under oath, as required by the preceding article, the total amounts of the capital stock issued and outstanding, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the Secretary of State may ascertain such facts from other sources; and, if the true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter, shall be thereon collected and paid; otherwise its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty of making any report

required by this article, except such report or reports as may be required by the Secretary of State. (Id., Sec. 5.)

Article 7398. *Supplemental Tax to Be Paid When Capital Increased.*—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in Article 7395 in case of the first franchise tax payment to be made under this chapter by a domestic corporation which may be hereafter authorized to do business within this State. (Id., Sec. 6.)

NOTE.—The following articles of the Revised Statutes upon this subject are omitted: Arts. 7394, 7401, relating to foreign corporations. Arts. 7397, 7400, 7404, 7405, relating to forfeitures and penalties for non-payment. Art. 7403, applying only to certain specified corporations. Art. 7406, relating to corporations in process of liquidation.

Title 134.

WELLS—OIL, GAS.

Article 7847. *Wells, How Cased.*—The owner or operator of any well being constructed for the production of petroleum oil, natural gas, or mineral water, shall, before drilling into the oil or gas bearing rock, in case [incase] such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. (Acts 1899, p. 68.)

Article 7848. *Abandoned Wells to be Filled.*—The owner or operator of any well constructed for either or any of the purposes named in the preceding article, when about to abandon or cease operating the same, and before

drawing the casing therefrom, shall securely fill such well with rock, sediment or with mortar, composed of two parts sand and one part cement or other suitable material to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expense thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. (Id. Sec. 2.)

Article 7849. *Gas to be Confined Until Utilized.*—Any person, co-partnership, or corporation in possession, either as owner, lessee, agent or manager, of any well producing natural gas, in order to prevent the said gas from wasting by escape, shall, within ten days after penetrating the gas bearing rock in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light or fuel or power; provided, that this shall not apply to any well that is operated for oil. (Id. Sec. 3.)

Article 7850. *Limitation on Use of Gas for Illuminating Purposes.*—It shall be unlawful for any person, co-partnership or corporation to use natural gas for illumi-

nating purposes by what are known as flambeau lights; but nothing herein shall prohibit the use of "Jumbo" burners, or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in and around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. (Id. Sec. 4.)

Article 7851. *Penalties; Disposition of Fines.*—Any person, copartnership, or corporation violating any of the provisions of this chapter shall be liable to a penalty of one hundred dollars, to be recovered with the cost of suit in a civil action, in the name of the State of Texas, in any court of competent jurisdiction in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the State of Texas, without security or liability of cost. The amount of said penalty when collected shall be paid, one-half into the school fund of the county in which said suit is brought and one-half to said person at whose instance said suit shall be brought. (Id. Sec. 5.)

Article 7852. *Duties of Persons Where Salt Water Appears in Wells.*—If any person or persons in this State, boring any well or wells for oil, gas or mineral waters, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well or wells already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such oil or gas wells already bored, such person or persons shall, if the flow of water can not be cased off, immediately abandon all work upon such well and plug and fill up the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to

remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap-rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. If any well shall be abandoned from any cause, the same shall be securely plugged and sealed. (Acts 1905, p. 228, Sec. 7.)

Article 7853. *District Courts; Jurisdiction and Supervision.; May Appoint Superintendent, Make Regulations, Etc.*—The district courts of each county in this State, and the judges thereof in vacation, shall have jurisdiction to enforce the provisions of this chapter; and they are hereby authorized and empowered, either in term time or in vacation, upon the application of any person or persons interested either as land owners, lessees of land or as well owners, in any oil or gas field in this State, in its discretion, to appoint some suitable person or persons as superintendent of such oil or gas field, and to require of such person a bond, the amount thereof to be fixed by the court, conditioned that such superintendent shall obey and carry out the rules, regulations, orders and decrees which may be from time to time prescribed and entered by said court for the protection of such oil or gas field, and the persons employed therein, from fire or other causes likely to be injurious to the properties and operations in such field, and with power and authority to enforce, under the orders of said court, a strict compliance by all persons with all the requirements of the laws of this State governing the boring and operation of oil or gas wells in oil or gas fields; and said courts are authorized and empowered to make from time to time such rules and regulations for the government of such oil and gas fields and the operation carried on therein, and the handling of the oil or gas products, as may, in the discretion of the court, be necessary or requisite for the protection of the several interests in said oil and gas field from fire or other probable injurious cause. The court may require of the persons who apply for the appointment of a superintendent

of any oil or gas field or other protective order proper security for the payment of any and all costs of court, including the salaries of any superintendents, or necessary employes under him, as well as for such other costs and expense as may be necessary to be expended in the protection of such oil or gas field and enforcement of the orders of said courts. (Id. Sec. 8.)

Article 7854. *Suits and Penalties, How Brought.*—Any person or persons, co-partnership, corporation, or association of persons, violating any of the provisions of this chapter, or who shall fail or refuse to obey any order or decree, rule or regulation, made or promulgated by said district courts requiring any act to be done or omitted, shall be liable to penalty of not less than five hundred dollars nor more than five thousand dollars, to be ascertained by the verdict of the jury of the court trying the cause; said sum to be recovered with the costs of suit in a civil action brought for that purpose in the name of the State of Texas, in any court of competent jurisdiction, in the county in which the act complained of shall have been committed or omitted; and such suit may be brought at the instance of any resident of the State of Texas, without security or liability for costs; and the amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. (Id. Sec. 9.)

THE BLUE SKY LAW.

CORPORATIONS—REGULATING THE SALE OF THE STOCK
OF SAME.

H. B. No. 9.]

CHAPTER 32.

An Act to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations organized for profit, which propose to increase their capital stock; and to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations being organized and hereafter organized or proposed to be organized, for profit; and to regulate and supervise the offering or contracting for sale and purchase of such stock of such corporation or proposed corporation, and to fix commission and promotion fees allowed to be charged; and providing for service of process, examination fees, and exempting certain corporations from the effect of this Act; providing penalty for the violation of the provisions of this Act, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Every private corporation, foreign or domestic, organized for profit, which is now attempting or shall hereafter attempt to increase its capital stock, and every proposed corporation attempted to be organized which shall, directly or indirectly, through itself, its agents or employes, or through any person or association of persons, holding companies, sales companies or otherwise, or through any other agents, sell or contract to sell any stock of such corporation or proposed corporation, upon which sale or proposed sale or contract of sale any part of the proceeds derived or to be derived therefrom are used or to be used, directly or indirectly, for the payment of any commission, promotion, organization fee or other expenses incident, directly or indirectly, to the sale of its shares of stock, except attorney's fees, charter fees, franchise tax, permit fees and stationery and supplies, shall be subject to the provisions of this act.

SEC. 2. This act shall also apply to any mining, oil or gas corporation increasing its stock or proposed mining, oil or gas corporation attempting to sell stock in which any land or mineral or thing of value is to be procured from, in or under such land that has been or is to be placed as an asset with or in the corporation or proposed corporation, whether any promotion fee is charged or not, and to any townsite corporation or proposed townsite corporation.

SEC. 3. Before offering for sale or contracting to sell, directly or indirectly, any stock of such proposed corporation, or such increased stock of any existing corporation, or before selling any stock in any townsite corporation as provided in Section 2, such corporation, or those promoting or having charge of the sale of stock of any proposed corporation, shall file, under oath, in the office of the Secretary of State, where, under the law, a charter would be filed in his department, or in the office of the Commissioner of Insurance and Banking, where, under the law, a charter would be filed in his department, together with a filing fee of twenty dollars, the following documents: A statement showing in full detail the plan upon which the corporation proposes to increase its capital stock or upon which the promoters or those having charge of the sale of stock of any proposed corporation proposes to sell its stock and organize the corporation, together with a copy of all the forms of contracts, stock (or deeds, if the same shall come under Section 2 hereof) to be used by the corporation or promoters, or those having charge of the sale of stocks of any proposed corporation in connection with such stock sales. The statement shall further show the name, location and domicile of such corporation, and the names of its officers or proposed officers, if any, promoters, and the addresses of all the parties; the amount of capital stock of any corporation already organized, the proposed increase, or the proposed capital stock of the corporation to be organized, and the price at which the stock is proposed to be sold; and the price at which the stock is proposed to be sold shall not

be changed without filing with the secretary or commissioner, as the case may be, a statement of such change, which shall be subject to his approval. Any such corporation promoters of such proposed corporation shall furnish the secretary or commissioner such other information as may be necessary or proper concerning the sale of its stock.

If it shall be a corporation organized under the laws of any other jurisdiction, it shall file with the secretary or commissioner a copy of its charter, and such other evidence of its authority as the secretary or commissioner may require.

Said statement shall also show the commission, promotion fee and other estimated incidental expenses proposed to be charged for the organization of such proposed corporation, or the increase in the capital stock of any corporation already organized, and how the commissions or fees are to be paid.

If the corporation or proposed corporation comes under Section 2 hereof, the officers of the corporation, or the promoters of the proposed corporation shall state the facts upon which they base their estimate of the actual value of the property which is to become an asset of the corporation, and the secretary or commissioner shall require such proof as he may deem proper to establish the actual value of the property.

The secretary or commissioner shall have the right to employ such experts as he may deem necessary, and the experts shall be employed at the expense of the corporation or promoters of a proposed corporation.

No corporation proposed to be organized for the purpose of buying and selling town sites and town lots shall hereafter be granted a charter by the Secretary of State, or if a foreign corporation shall not be granted a permit to do business in the State of Texas unless the incorporators of said proposed corporation or officer of such foreign corporation shall file with the Secretary of State each and every document, contract and all papers referred to in Section 3 of this act, as well as a general statement

of the plan of its proposed townsite, and a general statement of its methods of advertising same, together with a sample copy of its advertising literature, and no charter shall be granted any corporation unless after the compliance with the provisions of this act and in the judgment of the Secretary of State, such business of any proposed townsite corporation will be honestly and fairly conducted both to the corporation and to the public. And each and every corporation in this State now existing or hereafter organized desiring to engage in the sale of townsite lots or sites shall, prior to such sale, file with the Secretary of State a general plan of said proposed lots to be sold, as well as a copy of any and all proposed contracts to be made with the public in the sale thereof, and a general statement of the literature proposed to be issued, and all matter referred to in Section 3 hereof, and if in the judgment of the Secretary of State said sale will be conducted both honestly and fairly to the corporation and to the public, a permit to conduct said sale shall be granted. This provision shall not be construed to authorize the creation of any corporation for any purpose not now authorized by the laws of this State.

SEC. 4. The secretary or commissioner, upon the receipt of the information as provided for in Section 3, shall grant or refuse such permit.

If the secretary or commissioner shall decide that the sale of stock will be fairly and honestly conducted, both to the corporation and to the public, such permit shall be granted, provided that the commissions, promotions and other incidental expenses, exclusive of the exempted expenses mentioned in Section 1 of this act shall not be more than fifteen (15) per cent of the price at which such stock is to be sold as shown by the application or amended application.

Provided, that where any proposed corporation has already sold its stock, or a part thereof, or any part thereof has been subscribed at the time this act shall take effect, this act shall not affect stock previously sold or subscribed nor any contracts made in reference to same; but if any

of the stock of said proposed corporation remains unsold or unsubscribed, said corporation shall, nevertheless, be entitled to a permit upon complying with the other conditions of this act, including the future sale or subscription of any of its stock.

The commission or promotion fee shall be paid to the agent or promoter as the stock is sold by him and paid for by the purchaser. The stock shall be considered as paid for when paid for in cash, property or labor.

No permit shall be granted unless there shall appear upon the subscription lists and contracts of such corporation or proposed corporation, in bold type, the amount of the commissions, promotion fees and other estimated expenses incident to the sale of such stock, and the interest which the officer, agent, employe or promoter selling or contracting to sell such stock has in such sale; nor shall such permit be granted until the applicants therefor have entered into a bond for not less than one thousand dollars (\$1000) nor more than one hundred thousand dollars (\$100,000), the same to be fixed by the secretary or commissioner at not more than ten per cent of the stock proposed to be issued. The said bond shall be payable to the secretary or commissioner, as the case may be, and his successor in office, conditioned that the facts set forth in the application for such permit, and the proof and statements offered to such secretary or commissioner, upon which the application is based, are true, and that they will comply with the provisions of this act in the sale of the stock of such corporation or proposed corporation. Said bond may be made with individual sureties or a surety company authorized to do business in the State of Texas, and the bond shall be approved by the secretary or commissioner.

SEC. 5. If a permit shall be refused by the secretary or commissioner the parties applying therefor may bring suit in the district court of Travis county, Texas, to require said secretary or commissioner to issue such permit.

SEC. 6. Any person who shall be induced to purchase any stock of any corporation or proposed corporation by

the officers, agents, employes, promoters or trustees, by reason of any misrepresentation of any material fact concerning such stock, such person or persons shall have the right to bring suit upon the bond above provided for, and such bond shall be subject to, and security for, such person so purchasing the stock, provided that such person shall not be entitled to recover more than the money paid, or the actual value of the property given, or the labor performed, in exchange for such stock, with legal interest from the date of the payment or the performance of the services, or the transfer of the property.

One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect, but no recoveries upon such bond shall ever exceed the full amount of same, and upon suits being filed in excess of the amount of same, the secretary or commissioner may require a new bond, and if the same is not given within thirty days, he may cancel the permit herein provided for.

Whenever any permit has been issued, the corporation or persons receiving the same shall file a list of the names of their or its authorized officers, agents and employes, and the postoffice address of each; and, in case of the change of any of its officers, agents or employes, it shall file a list of such changes with the secretary or commissioner.

SEC. 7. All moneys or other things of value collected by such corporation or the promoters of a proposed corporation, for the sale of its stock, or contract for the sale of its stock, shall be deposited by said corporation to its credit, or by the promoters of a proposed corporation, to the credit of its proposed officers or trustees, with the exception of the amount allowed for commissions, promotion fees and other incidental expenses, with a bank, bank and trust company or trust company incorporated under the laws of this State, or of the United States.

SEC. 8. All such corporations, and the organizers or trustees of proposed corporations shall keep a set of books, which shall show the amount of money, or other things of value received by such corporation or proposed cor-

poration, from the sale of its stock, or from contracts of sale of its stock, and such books shall show the number and amounts of stock sold or contracted to be sold, by whom sold, and to whom sold, or contracted to be sold, and the postoffice address of each. Said books shall at all times be open for inspection by the secretary or commissioner, or his duly authorized agent.

SEC. 9. Whenever the secretary or commissioner shall have information that any corporation, or the promoters of the proposed corporation, its officers, agents or employes, are not complying with the terms of this act in the sale of its stock they shall notify such corporation, or the officers, agents or employes or the promoters of the proposed corporation to appear, within twenty days, and show cause why such permit should not be canceled, and after the hearing such secretary or commissioner shall have the right to cancel such permit if the proof shall show that such corporation or proposed corporation, or its officers, agents or employes are not complying with the terms of this act, but the parties or corporation holding such permit shall have the right to bring suit, in the district court of Travis County, Texas, against the secretary or commissioner, to reinstate such permit to sell stock.

SEC. 10. No permit to sell stock shall ever be issued to any foreign corporation which has not at the time of making application for permit at least fifty per cent of its capital stock subscribed and paid in, providing that this shall not apply to any foreign corporation engaged exclusively in the business of lending money in this State, nor to any insurance company that is required by law to obtain a permit from the Commissioner of Insurance and Banking.

SEC. 11. Each foreign corporation or the promoters of any proposed foreign corporation desiring to sell or contract to sell its stock in this State shall first file with the secretary or commissioner a like power of attorney to that provided for life insurance corporations in Article 4773, Revised Civil Statutes of the State of Texas of 1911,

and service may be had upon the corporation and the secretary or commissioner, as the case may be, as therein provided for, and the secretary or commissioner, as the case may be, upon receipt of such process as is therein provided for, shall proceed as is provided for him to do in Article 4774, Revised Civil Statutes of the State of Texas of 1911, and the secretary or commissioner's acts and conduct in regard to such power of attorney, and such process shall be the same as is provided for in said Articles 4774 and 4773, and the effect, force and result of such acts shall be the same as therein provided for.

SEC. 12. It shall hereafter be unlawful for any officer, agent or employe or trustee, or holding company, or sales agents, or person, or association of persons in this State to sell, or offer to sell, or contract to sell, directly or indirectly, for such concern, any stock of any corporation or proposed corporation, subject to this act, which has been, proposed to be, is now being, or may hereafter be organized for profit, without first complying with the provisions of this act, and any person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than two thousand dollars, and in addition thereto may be imprisoned in the county jail for any period not more than one year, or by both such fine and imprisonment.

SEC. 12a. At the expiration of two years from the granting of a permit under this act if the proposed corporation has failed to organize, then all subscribers must be refunded the amount paid to the promoter or trustee; provided, however, that the secretary or commissioner may grant an extension of time for the sale of securities.

SEC. 13. This act shall be construed to be cumulative of any other law or laws of this State.

SEC. 14. The terms of this act shall not apply to any national bank, nor to any corporation having a charter granted under any act of the Congress of the United States, nor to any State bank, bank and trust company or trust company organized under the laws of this State, nor to any corporation organized under the Federal Re-

clamation Act, approved June 17, 1902, or the regulations established by the Secretary of the Department of the Interior in pursuance thereof. Nor shall the terms of this act apply to any corporation or the promoters of any corporation organized under the laws of Texas which does not sell or contract to sell its stock to more than twenty-five bona fide purchasers; provided, it does not act as the agent or trustee, holding company or sales company in the promotion of any concern which is included under the terms of this act. Nor shall this act apply to any railroad or railway company, or interurban railroad or railway company, or street railroad or railway company. Nor shall this act apply to the sale of stock of a corporation by a bona fide owner of same, who had in good faith bought the same, and who in the purchase and sale of same was and is not acting directly or indirectly as promoter or agent of such corporation. Nor shall this act apply to a bona fide stock or stock broker in the sale of stock, which stock has been by such corporation sold and issued to a bona fide purchaser prior to the offering of same for sale by such broker; provided, that such purchaser or broker was not acting, directly or indirectly, as promoter of such corporation.

SEC. 15. All moneys collected under the terms of this act by the secretary or commissioner shall be quarterly deposited by him with the State Treasurer and credited to the general fund. Whenever the secretary or commissioner shall deem it necessary to examine the books of any corporation or proposed corporation, subject to the provisions of this act, or investigate its financial condition, he shall do so at the expense of the corporation or proposed corporation under investigation, and the corporation or the agents of the corporation or proposed corporation being investigated shall pay to the secretary or commissioner, or his agent, making the investigation his actual expenses and seven dollars and fifty cents per day for such investigation, which said expenses shall be paid at the termination of such investigation by the concern investigated.

SEC. 16. Whenever the word "secretary" is used in this act it shall be considered to mean Secretary of the State of Texas, and whenever the word "commissioner" is used in this act it shall be considered to mean Commissioner of Insurance and Banking of the State of Texas.

SEC. 17. The fact that there is no law in this State regulating the sale of stocks of numerous corporations which are selling such stocks throughout this State, many of which are worthless, and the fact that the people of this State are being imposed upon by unscrupulous persons selling such worthless stocks, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days be suspended, and that this act shall take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 9 was passed by the House August 14, 1913, but no vote given; House granted request of Senate for return of bill August 19, 1913, and concurred in Senate amendments August 19, 1913, by the following vote: yeas 69, nays 35, and was passed by the Senate August 19, 1913, but no vote given.]

Approved August 21, 1913.

Takes effect 90 days after adjournment.

DIGEST OF OPINION OF ATTORNEY GENERAL CONSTRUING THE LAW.

1. (a) The Blue Sky Law does not apply to the sale of stock by corporations which had been chartered prior to the date the law went into effect, in so far as their original stock is concerned.

(b) It does not apply to the increased capital stock of corporations chartered prior to the time the law went into effect, where such increase took place prior to the taking effect of this Act of the Legislature.

2. (a) The following classes of corporations are exempt from the provisions of the Blue Sky Law: All cor-

porations, or the promoters thereof, which do not directly or indirectly agree to pay any commission, promotion or organization fees incident to the sale of its stock, unless such corporations are mining, oil, gas or townsite corporations. In the case of the last named character of corporations the provisions of the law apply, regardless of the question of the payment of promotion or other fees incident to the organization.

(b) The terms of the Act do not apply to any national bank nor to any corporation having a charter granted under any Act of Congress, nor to any State bank or trust company organized under the laws of this State, nor to any corporation organized under the Federal Reclamation Act, nor does the Act apply to any corporation or its promoters where such corporation organized under the laws of this State does not sell or contract to sell its stock to more than twenty-five bona fide purchasers; provided, such corporation does not act as agent or trustee, holding or sales company, in the promotion of any concern included within the terms of the Act. This exemption applies to mining, oil, gas and townsite corporations the same as it does to other corporations.

(c) The Act does not apply to any railroad corporation, interurban nor street railway.

(d) It does not apply to the sale of stock of the corporation by a bona fide owner of the same, who in good faith bought the same and is not acting, directly or indirectly, as a promoter or agent of the corporation.

(e) Nor does the Act apply to a bona fide stock or stock broker in the sale of stock, which stock has been theretofore issued and sold, bona fide, to some purchaser; provided, however, that such purchaser or broker is not acting, directly or indirectly, as promoter of the corporation.

3. (a) The Blue Sky Law applies to townsite, mining, oil and gas corporations incorporated under the laws of this State where its increased capital stock is paid out of the surplus earnings of the corporation; provided, how-

ever, that the purpose of the increase is to sell the stock based on its increased capital.

(b) But where the increased capital is paid in by the existing stockholders and the stock is issued directly to them, or where the stock is issued against the surplus earnings of the company in the nature of a stock dividend, then such acts do not come under the provisions of the law.

(c) Any act of the corporation which does not amount to a sale of stock by it or by promoters for it, is not subject to the law.

4. Certain portions of Section 3 of the Act are unconstitutional and should be disregarded.

5. If a foreign corporation had secured its charter and was in all things duly incorporated prior to the enactment of the Blue Sky law then the sale of its original capital stock would not come within the terms and provisions of the Blue Sky Law.

6. (a) Promotion fees, commissions, organization fees and other incidental expenses incurred prior to the chartering of the corporation, cannot be paid out of the capital stock of the corporation taken at its par value, and such fees must be collected from the purchasers of stock in addition to par value of the stock.

(b) Attorney's fees, charter fees, franchise taxes, permit fees and expenditures for stationery and supplies may be paid out of the capital stock taken at its par value.

(c) A promoter is one who actively engages in the financing and organization of an enterprise under the corporate form, and may be defined as a person to bring about the incorporation and organization of corporations.

(d) The constitutional provision providing that corporations can only issue stock for money paid, labor done or property actually received, means money paid to the corporation, labor done for the corporation and property actually received by the corporation.

(e) The word "property," as used in the Constitution, means something substantial and capable of being

made an asset of the corporation, which might respond in law to the claims of creditors.

(f) The term "money paid" is definite and plain. It does not mean that the stock may be sold for money to be paid, but must be sold for cash. Of course, the payments may be made in installments, but the stock must be paid for in money.

(g) The property which may be received by a corporation in payment of stock must be such property as the corporation has authority under its charter to take and hold; if the property is not such as is necessary or proper for the conduct of the corporation's business, then it could not issue stock therefor.

(h) The labor performed by a promoter or stock salesman is not labor performed for the corporation and can not be paid for out of the capital stock of the corporation, and if paid by the corporation, must be paid out of a sum of money collected for such purpose in addition to the par value of the capital stock.

OPINION.

ATTORNEY GENERAL'S DEPARTMENT,
AUSTIN, TEXAS, February 10, 1914.

Hon. F. C. Weinert, Secretary of State, Capitol.

DEAR SIR: This department has from time to time rendered you various opinions construing what is known as the Blue Sky Law. You have stated to us that you desired to publish the holdings heretofore made in regard to this measure in a pamphlet with the forms prepared by this department for your use and have requested that the several holdings heretofore made by us be placed in one opinion for the convenience of your department and of those who might have occasion to consider the rulings of this department on the questions in issue. This opinion is now written for the purpose stated.

The subject of this discussion is what is known as the Blue Sky Law, being Chapter 32, Acts of the First Called Session of the Thirty-third Legislature. This measure was approved by the Governor on August 21, 1913, and became a law ninety days after the adjournment of the Legislature, which adjournment took place on August 19, 1913. The law, therefore, became effective on the 18th day of November, 1913.

1.

The first question for consideration is: Does the Blue Sky Law apply to the sale of stock by corporations which had been chartered prior to the date the law went into effect, as to their original issue of capital stock, and does it apply to the increased capital stock of corporations where such increase took place prior to the taking effect of this Act of the Legislature?

We answer this question in the negative and say that the law does not apply to such corporations. This is apparent from the consideration of the context of the Act. For example, Section 1 of the Act provides in substance that every private corporation attempting at the time the Act takes effect or which might thereafter attempt to increase its capital stock, and every proposed corporation attempting to be organized when the Act takes effect or thereafter, must comply with the provisions of the Act, provided of course, such corporations do not come within the exceptions named in the Act.

Section 3 of the Act also makes it clear that the provisions of the Act apply only to increase of capital stock of existing corporations made after the Act takes effect and to corporations chartered after the Act takes effect, for it provides, in substance, the following:

"Before offering for sale or contracting to sell, directly or indirectly, any stock of such proposed corporation, or such increased stock of any existing corporation, etc."

A part of Section 4 also reads to the same conclusion:

"Provided, that where any proposed corporation has already sold stock, or a part thereof, or any part thereof has been subscribed at the time this Act shall take effect, this act shall not affect stock previously sold or subscribed nor any contracts made in reference to same."

If, however, the context of the Act should give rise to any doubt as to this issue, the caption of the Act settles the question of construction. The caption reads as follows:

"An Act to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations organized for profit, which propose to increase their capital stock; and to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations being organized and hereafter organized or proposed to be organized, for profit; and to regulate and supervise the offering or contracting for sale and purchase of such stock of such corporation or proposed corporation, and to fix commission and promotion fees allowed to be charged; and providing for service of process, examination fees, and exempting certain corporations from the effect of this Act; providing penalty for the violation of the provisions of this Act, and declaring an emergency."

It is a well recognized rule of construction that the caption of the Act is one of the proper sources to which we may look in determining the meaning and intent of the Act.

State vs. Delesdenier, 7 Texas, 76.

Byrnes vs. Sampson, 74 Texas, 79.

Walraven vs. Farmers, etc., National Bank, 96 Texas, 331.

Texas-Mexican Ry. Co. vs. Jarvis, 69 Texas, 527.

This construction is also consistent with the due regard for the vested rights of existing corporations. If we should hold that the provisions of this Act apply to the increased capital stock of corporations where the increase had been made under provisions of law prior to the taking effect of the Act, then we should meet with serious constitutional objections to the Act; because such increase of capital would have been made under existing law and the right of the corporation to dispose of this stock in the manner then provided by statute would be a vested right, which could not be interfered with by the Legislature, even under the provisions of our law which reserved to the State the right to alter or amend the charters of corporations or the laws governing the same. In other words, the limitations placed by this Act on the right of a corporation to sell its stock, the manner of its sale and the method of its contracting with parties for the sale of the same are not the regulation of an existing right, but in many respects the destruction of an existing right and are such character of regulation as to substantially impair the rights of a corporation whose stock was issued under the old law or whose capital or increased capital was provided for under the old law. The rule is stated thus by Judge Cooley in his great work on Constitutional Limitations:

"The maxim, *Sic utere tuo ut alienum non laedas*, is that which lies at the foundation of the power; and to whatever enactment affecting the management and business of private corporations it cannot fairly be applied, the power itself will not extend. It has accordingly been held that when a corporation was chartered with the right to take toll from passengers over their road, a subsequent statute authorizing a certain class of persons to go toll free was void. This was not a regulation of existing rights, but it took from the corporation that which they before possessed, namely, the right to tolls, and conferred upon individuals that which before they had not, namely the privilege to pass over the road free of toll. 'Powers,

it is said in another case, 'which can only be justified on this specific ground (that they are police regulations), and which would otherwise be clearly prohibited by the Constitution, can be such only as are so clearly necessary to the safety, comfort, and well-being of society, or so imperatively required by the public necessity, as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the language of the prohibition would otherwise include it.' And it was therefore held that an act subsequent to the charter of a plank road company, and not assented to by the corporators, which subjected them to a total forfeiture of their franchises for that which by the charter was cause for partial forfeiture only, was void as impairing the obligation of contracts. And even a provision in a corporate charter, empowering the Legislature to alter, modify, or repeal it would not authorize a subsequent act which, on pretense of amendment, or of a police regulation would have the effect to appropriate a portion of the corporate property to the public use. And where by its charter the corporation was empowered to construct over a river a certain bridge, which must necessarily constitute an obstruction to the navigation of the river, a subsequent amendment making the corporation liable for such obstruction was held void, as in effect depriving the corporation of the very right which the charter assured to it. So where the charter reserved to the Legislature the right of modification after the corporators had been reimbursed their expenses in constructing the bridge, with twelve per cent interest thereon, an amendment before such reimbursement, requiring the construction of a fifty-foot draw for the passage of vessels, in place of one of thirty-two feet, was held unconstitutional and void." (Cooley's Constitutional Limitations, pp. 710-712.)

So we suggest that if any construction other than that which we give this law should be given it, then serious constitutional objections are met with, and we believe that it is proper for us to give the Act a construction which will make it in this respect constitutional. The general rule is that a statute should not be held invalid if it can be so construed, considering all its provisions, as to make it a valid one, and a construction which would render the statute unconstitutional will not be adopted where a constitutional purpose can fairly be derived from its terms.

Brown vs. City of Galveston, 97 Texas, 1.

Robinson vs. Varnell, 16 Texas, 382.

G. H. & S. A. Ry. Co. vs. State, 93 S. W., 464.

Runge & Co. vs. Wyatt, 25 Texas Supp., 292.

Womack vs. Womack, 17 Texas, 1.

Madden vs. Hardy, 92 Texas, 613.

So on the whole we conclude, and so advise you, that the Blue Sky Law does not apply to the increased capital stock of corporations where such increase was made prior to the time the Act took effect, and that it does not apply to the capital stock of corporations which were incorporated prior to the time the Act took effect. Of course, the Act will apply to all increases of capital stock made after the Act took effect, whether such corporations were incorporated prior to that time or since that time, provided, of course, the corporations are not within the exceptions specified in the Act.

2.

(a) You are advised that the following classes of corporations are exempt from the provisions of this Act: All corporations, or the promoters thereof, which do not directly or indirectly agree to pay any commission, promotion, organization or other fees or expenses incident to the sale of its stock, unless, of course, such corporations are mining, oil, gas or townsite corporations; in the event a corporation is a mining, oil, gas or townsite corpora-

tion, then the provisions of the Act apply regardless of whether or not a promotion fee or other fee incident to the sale of the stock is charged.

(b) The terms of the Act do not apply to any national bank nor to any corporation having a charter granted under any Act of Congress or of the United States, nor to any State bank or bank and trust company or to any trust company organized under the laws of this State, nor to any corporation organized under the Federal Reclamation Act, approved June 17, 1902, or the regulations established by the Secretary of the Interior in pursuance thereof. Nor do the terms of the Act apply to any corporation or the promoters of any corporation organized under the laws of Texas which does not sell or contract to sell its stock to more than twenty-five *bona fide* purchasers, provided, of course, such corporation does not act as agent or trustee, holding company or sales company in the promotion of any concern which is included under the terms of this Act.

This exemption applies to mining, oil, gas and townsite corporations the same as it does to other corporations.

(c) The Act does not apply to any railroad or railway corporation or interurban railroad or railway company or to any street railroad or railway company.

(d) Nor does the Act apply to the sale of stock of the corporation by a *bona fide* owner of the same who in good faith bought the same and who in the purchase and sale of the same is not acting directly or indirectly as a promoter or agent of such corporation; and

(c) Nor does the Act apply to a *bona fide* stock or stock broker in the sale of stock, which stock has been by such corporation sold and issued to a *bona fide* purchaser prior to the offering of same for sale by such broker; provided, of course, that such purchaser or broker was not acting, directly or indirectly, as promoter of such corporation.

3.

Among the other questions propounded by you is the following:

“Does Chapter 32, Acts of the First Called Session of the Thirty-third Legislature, apply to townsite, mining, oil and gas corporations incorporated under the laws of this State where all of the increase is paid in cash or paid out of the surplus earnings of the corporation?”

We answer this question and state that where the purpose of the corporation is to sell the stock upon its increased capital, then that such corporation comes under the terms and provisions of the law regardless of whether or not the increased capital was paid in cash or whether the stock is issued against the surplus earnings of the corporation, but where the increased capital is paid in by the existing stockholders and stock is issued directly to them, or where the stock is issued against the surplus earnings of the company in the nature of a stock dividend and no promotion fee of any kind is charged, then the corporation in that matter does not come under the provisions of the law; the reason being that no sale of the stock is made and the purpose of the Act is to regulate, as stated in the caption, “the sale and purchase in this State of stocks, etc.”

Any act of the corporation which does not amount to a sale of stock by it or by promoters for it would not be subject to the provisions of the law, except, of course, where such act is material to the sale of the stock, when it might or might not come under the provisions of the law, depending on the nature and quality of the act.

4.

We now direct your attention to a portion of Section 3 of this Act, which is wholly void and of no effect, and

should be disregarded by you. This part of the section is as follows:

"No corporation proposed to be organized for the purpose of buying or selling townsites and town lots shall hereafter be granted a charter by the Secretary of State, or if a foreign corporation shall not be granted a permit to do business in the State of Texas, unless the incorporators of said proposed corporation or officer of such foreign corporation shall file with the Secretary of State each and every document, contract and all papers referred to in Section 3 of this Act, as well as a general statement of the plan of its proposed townsite, and a general statement of its methods of advertising same, together with a sample copy of its advertising literature, and no charter shall be granted any corporation unless after the compliance with the provisions of this Act and in the judgment of the Secretary of State, such business of any proposed townsite corporation will be honestly and fairly conducted both to the corporation and to the public. And each and every corporation in this State now existing or hereafter organized desiring to engage in the sale of townsite lots or sites shall, prior to such sale, file with the Secretary of State a general plan of said proposed lots to be sold, as well as a copy of any and all proposed contracts to be made with the public in the sale thereof, and a general statement of the literature proposed to be issued, and all matter referred to in Section 3 hereof, and if in the judgment of the Secretary of State said sale will be conducted both honestly and fairly to the corporation and to the public a permit to conduct said sale shall be granted. This provision shall not be construed to authorize the creation of any corporation for any purpose not now authorized by the laws of this State."

It will be noted from a reading of the foregoing excerpt from the Act that it relates wholly and solely to the incorporation of townsite corporations and the conduct of the

business of townsite companies in the sale of town lots. In other words, it requires certain conditions of townsite companies before they may be incorporated, and requires them to obtain a permit on certain conditions before they may be permitted to sell their lots. This subject is one entirely foreign to the general purposes of the bill and has no relations to the sale and purchase of stocks. We do not know the history of its incorporation in the provisions of this measure, but it is very clear that the subject of the provision quoted above is not embraced within the caption of the Act and such omission to place it in the caption is fatal to the provision.

We direct your attention to Section 35, Article 3, of our Constitution, which provides:

“No bill (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.”

We have already quoted the caption or title of this Act, and it is not necessary here to re-state the same, but the title of the Act has to do only with the supervision of the purchase and sale of stocks and in no part of the same makes any reference to imposing terms upon which townsite companies may be incorporated or imposing terms under which townsite companies may be permitted to sell their town lots. The title in substance is:

“An Act to regulate and supervise the sale and purchase in this State of stocks of private, foreign and domestic corporations which propose to increase their capital stock; and to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations being organized, etc.”

There is absolutely nothing in the title to the Act indicating any intention to pass a law regulating the incorporation of townsite companies or the sale of town lots. Therefore, so much of the Act as we have just quoted above, relative to incorporating townsite companies and the sale and obtaining permits to sell town lots by such companies, is unconstitutional, void, of no effect and should be disregarded by you.

Art. 3, Sec. 35, of the Constitution.

M. K. & T. Ry. Co. vs. The State, 102 Texas, 155.

Clark vs. Commissioners, 54 Kansas, 634.

Henderson vs. Insurance Co. 20 L. R. A., 829.

State vs. Co. Comm., 47 Neb., 428.

In the case of M. K & T. Ry. Co. vs. State, cited above, the caption of the bill defined it to be: "An Act to protect the rights and property of the traveling public and the employes of the railroads in the State of Texas." The first and second sections of the Act made it unlawful for railroad companies to run any passenger train, freight train, or light engine outside of the yard limits with less than the full crews of the number of men specified for each. The Supreme Court of this State held that the caption was wholly insufficient and that it did not express the subject of the Act. In passing upon the question, the court said:

"Is that subject expressed in the title? We think it clear it is not. The title no more expresses and directs attention to that subject than it would to any other legislation which might have been written under it, the tendency of which might have been to protect the lives and property of the traveling public and of railroad employes, such as laws directed against robbers, the obstruction of or injury to tracks, interference with cars and engines, or regulating the conduct of persons at crossings, or the giving of signals, and numerous others that might be instanced. A title so general as that of this Act gives no intimation of the

particular subject to which the body of the Act is confined. That which is expressed in the title is not the subject of the Act, but the general end or purpose to be subserved. * * * The title must not only express a subject, but must express that which is dealt with in the body of the Act. No authority but the plain language of the Constitution is needed for that purpose."

The evident purpose of the Constitution in requiring that the subject should be stated in the bill and that there should not be two purposes in any one bill, was to prevent (a) hodge podge or log-rolling legislation; (b) to prevent surprise or fraud upon the Legislature by means of provisions in bills, of which the titles give no intimation, and which might, therefore, be overlooked and carelessly or unintentionally adopted; and (c) to fairly apprise the people through such publication of legislation as is usually made of the subjects of legislation that are being considered, in order that they may have an opportunity of being heard by petition or otherwise, if they shall desire. (Cooley on Constitutional Limitations, p. 172.)

Concerning this matter Judge Cooley has said:

"1. *The Evils Designed to be Remedied.*—The Constitution of New Jersey refers to these as 'the improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other.' In the language of the Supreme Court of Louisiana, speaking of the former practice: 'The title of an Act often afforded no clue to its contents. Important general principles were found placed in Acts, private or local in their operation; provisions concerning matters of practice or judicial proceedings were sometimes included in the same statute with matters entirely foreign to them, the result of which was that on many important subjects the statute law had become almost unintellig-

ible, as they whose duty it has been to examine or act under it can well testify. To prevent any further accumulation to this chaotic mass was the object of the constitutional provision under consideration.' The Supreme Court of Michigan say: 'The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles give no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the Constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the Legislature should be fairly satisfied of its design when required to pass upon it.'

- The Court of Appeals of New York declare the object of this provision to be 'that neither the members of the Legislature nor the people should be misled by the title.' The Supreme Court of Iowa say: 'The intent of this provision of the Constitution was, to prevent the union, in the same Act, of incongruous matters, and of objects having no connection, no relation. And with this it was designed to prevent surprise in legislation, by having matter of one nature

embraced in a bill whose title expressed another.' And similar expressions will be found in many other reported cases. It may, therefore, be assumed as settled that the purpose of these provisions was: First, to prevent hodge-podge or 'log-rolling' legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and, third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire."

However, the mere fact that that portion of the Act just above quoted by us is unconstitutional does not necessarily render the Act void, for the reason that the Constitution itself has provided against just such a contingency, for the constitutional provision referred to contains this clause:

"But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof, as shall not be so expressed."

In holding that portion of the Act quoted and here under consideration unconstitutional and void we have given this Act the most considerate and tenderest construction which we could give it. If we were to hold that the portion of the Act quoted was embraced within the caption, then very clearly the caption would contain two subjects and would be in violation of the Constitution and the whole Act rendered void.

82 Texas, 496.

San Antonio vs. Gould, 34 Texas, 49.

State vs. McCracken, 42 Texas, 383.

We have preferred, therefore, to give the Act a construction which, if possible, will render it constitutional by eliminating from the Act the unconstitutional and void provision referred to and quoted. We have heretofore cited authorities showing that this is a correct rule of construction. It is also one generally recognized by the courts of the country. (Cooley's Constitutional Limitations, p. 177.)

5.

The next question for consideration is that suggested in your letter of December 24th and answered in our departmental opinion No. 1079, which question was whether or not the Blue Sky Law would apply to the sale of stocks made in this State under a contract with a foreign corporation, where the contract was made prior to the enactment of the Blue Sky Law.

In reply to this inquiry, we beg to advise you that if the foreign corporation referred to had secured its charter and was in all things duly incorporated prior to the enactment of the Blue Sky Law, then the sale of its stock would not come within the terms and provisions of the Blue Sky Law; in other words, the opinion heretofore rendered you is as applicable to foreign corporations as it is to domestic corporations. It is unnecessary for us to enter into a detailed discussion to support the view here expressed, but we call your attention to the caption of the Blue Sky Law. That part to which we direct your attention reads as follows:

"An Act to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations organized for profit, which propose to increase their capital stock; and to regulate and supervise the sale and purchase, in this State, of stocks of private, foreign and domestic corporations being organized or hereafter organized or proposed to be organized, for profit; * * *"

You will note from the foregoing that the caption covers three classes of corporations or proposed corporations:

(1) Foreign and domestic corporations already chartered but which propose to *increase their capital stock*.

(2) Proposed domestic or foreign corporations being organized but which have not received their charters; and

(3) Proposed corporations, that is, corporations which may be proposed to be organized after the Blue Sky Law goes into effect.

Section 1 of the Act is not quite so definite as the caption and embraces the two classes named above in one provision, that is, it classifies them as proposed corporations. That part of Section 1, to which it is necessary to refer, reads as follows:

"Every private corporation, foreign or domestic, organized for profit, which is now attempting or shall hereafter attempt to increase its capital stock, and every proposed corporation attempted to be organized, etc. * * *"

It is very clear, therefore, from the caption and the first section of the Act that it does not apply to the sale of the original stock of either a domestic or foreign corporation where such corporation was chartered before the Blue Sky Law went into effect. However, if such domestic or foreign corporation had not been fully chartered, that is to say, if it was merely in a process of promotion, or had merely secured a permit to organize a corporation, as is necessary in some of the States, then the Blue Sky Law would apply to the sale of its stock in Texas, except to that portion of the stock which had already been sold or which had been contracted to be sold prior to the enactment of the Blue Sky Law. The exception is embraced within Section 4 of the Blue Sky Law, and is, in part, as follows:

"Provided, that where any proposed corporation has already sold its stock, or a part thereof, or any

part thereof has been subscribed at the time this Act shall take effect, this Act shall not affect stock previously sold or subscribed nor any contracts made with reference to same; but if any of the stock of said proposed corporation remains unsold or unsubscribed, said corporation shall, nevertheless, be entitled to a permit upon complying with the other conditions of this Act, including the future sale or subscription of any of its stocks. * * *

This, of course, means that if the stock in a proposed corporation is sold or subscribed for previous to the enactment of the Blue Sky Law, then such law should not apply to so much of the stock as was subscribed or sold, but that the Blue Sky Law did, as to such proposed corporation, apply to all unsubscribed or unsold stock at the time the Blue Sky Law went into effect.

It is not very clear from the letter, attached to your communication, whether or not the corporation to which he refers had already been chartered at the time the Blue Sky Law went into effect. If it had been chartered and the corporation stock referred to was the original capital stock of the corporation, then, of course, the sale of that stock would not be under the Blue Sky Law; but if the corporation had not been chartered but was merely in the process of organization, then the Blue Sky Law would apply. In such case, the mere fact that a contract had been made to sell the stock of such proposed corporation prior to the enactment of the Blue Sky Law would be immaterial, as such contract would subordinate the right of the State to regulate the sale of stocks within its boundaries. This question would probably be presented if the corporation was already chartered and was offering for sale its capital stock, and it is probable that the purpose of the Legislature in writing the law as written was to keep this suggested question from arising.

6.

The next question for consideration is whether or not promotion fees, commissions, organization fees, and other incidental expenses incurred prior to the chartering of the corporation may be paid out of the capital stock of the corporation, or must such fees be paid out of the par value of the capital stock of the corporation?

The answers to this question involves an examination into two other questions:

(a) The nature of the services rendered by the promoter, stock salesman, or other person bringing into existence the corporation or selling its stock.

(b) The constitutional and statutory method of paying in the capital stock of corporations chartered under the laws of Texas.

We will consider the questions in the order named.

Section 1, Chapter 32, General Laws of the First Called Session of the Thirty-third Legislature, appears to divide the pre-corporate expenses of a corporation into two general classes. The first class consists of those expenditures designated as "any commission, promotion or organization fee or other expenses incident, directly or indirectly, to the sale of its shares of stock," and the second class is composed of "attorney's fees, charter fees, franchise tax, permit fees, and stationery and supplies."

It is only those corporations in a general way which are brought into existence by incurring the first class expenditures that come within the terms of the Blue Sky Law. Section 2 of the Act designates certain corporations which come within the law, however, regardless of the question of incurring the expenses mentioned in the first class designated, but it is not necessary in this paragraph of this opinion to discuss those exceptions. The second class of expenses, it will appear, may be incurred by the corporation, or assumed by it, after its organization, without bringing the corporation within the terms of the Blue Sky Law. For the purpose of convenience we will designate all the various expenditures referred

to in the first class as taken from Section 1 of the Act as promotion fees; that is, for the purpose of this opinion, we describe commissions, promotion fees, organization fees, and other expenses incident, directly or indirectly, to the sale of shares of corporate stock as promotion fees.

A promoter is one who actively engages in the financing and organization of an enterprise under the corporate form; promoters have been defined by an eminent authority as persons who bring about the incorporation and organization of corporations.

Conyngton on Corporate Organization, Sec. 225.

Cook on Corporations, Sec. 650.

Dickerman vs. Northern Trust Co., 176 U. S., 203.

Thompson on Corporations, Sec. 415.

It may be stated, therefore, that the purpose of the promoter is to bring into existence a corporation, but the contracts made by him in carrying into effect this purpose are not contracts with the corporation, but only contracts between the promoter and the incorporators, or between the incorporators themselves. The corporation must have a full and complete organization and existence as a legal entity before it can enter into any kind of contract or transact any business. The doctrine which obtains generally in the United States and which has been adopted in Texas is, that engagements of promoters do not bind the future corporation, unless the corporation, expressly or impliedly, ratifies them. The corporation may, after its creation, of course, ratify agreements which are within its corporate powers, but the contract of the promoter himself is not the contract of the corporation, and, therefore, the services rendered by him are not services for the corporation.

Thompson on Corporations, Sec. 480.

W. M. W. & N. W. Ry. Co. vs. Granger, 86 Texas, 352 et seq.

Conyngton on Corporate Organization, Sec. 229.

The Granger case, *supra*, defines the status of a promoter and the rights of those contracting with him in line with the propositions just made by us, and is altogether a very clear and convincing opinion written by Judge Gaines while he was Associate Justice of the Supreme Court of this State. In the opinion referred to this rule is stated as follows:

"It is generally held, that in the absence of such provision in the act of incorporation in case of a special charter, or in the general law or in the articles of incorporation under a general law, no implied promise can be imputed to a corporation to pay for the services of a corporator or promoter before the corporation comes into existence. A contract made by promoters may be adopted by a corporation, expressly or impliedly, by exercising rights under it; but otherwise it is not binding upon such corporation." (86 Texas, 356.)

In its opinion the court held also that services given by an attorney in preparation of the articles of incorporation which are usually necessary services, if made under a contract with the promoter, could not be collected from the corporation after it was chartered, unless the corporation, after it came into existence, agreed to pay the same. The court said:

"Such services are usually necessary, and it would seem that the corporation should pay for them. Such payment is frequently provided for in the act of incorporation, or in the articles when the incorporation is effected under a general law. When such is the case, persons who take stock in the company are chargeable with notice that a liability for this purpose has already been created, and it is proper for the corporation to discharge it. *But in the absence of such provision in the statute or in the articles, it may be unjust to shareholders to charge the cor-*

poration with liabilities of which they had no actual knowledge at the time they accepted the shares. We therefore hold, with some hesitation, that claims for the necessary expenses of the organization, under our statute, should not be excepted from the general rule applicable to contracts made before the corporation has come into legal existence. (86 Texas, 357.)

It would appear, therefore, to be settled law of this State that the expenditures heretofore referred to as class 1, described in Section 1 of Chapter 32, supra, and even the attorney's fees in class 2, described in said section, when such expenditures are incurred or authorized by the promoters, or in the promotion of the corporation, are not in any sense the liabilities of the corporation, unless adopted by the corporation after it is chartered, and that in all probability they could not be adopted by the corporation over the protest of its stockholders, unless the subscription contracts contain a clause showing the subscriber that such expenditures would be adopted by the corporation with its liabilities after the charter is issued. The entire trend of authority would show, which is the proposition we here submit, that services rendered prior to the time the charter is granted are services which are rendered to the incorporators themselves and not to the corporation as such, and that therefore all labor done or money expended in this direction is not necessarily labor done for the corporation nor money expended for it. It is true that there are certain expenses, such as attorney's fees, charter fees, franchise tax, permit fees, stationery and supplies, which are those expenditures referred to by us as class 2 of Section 1 of the Act, which are in reality for the corporation and may be adopted by it, but the expenditures referred to as class 1 of Section 1 of the Act are not expenditures necessarily for the corporation.

(c) We will next consider the constitutional and statutory method of paying in the capital stock of corporations chartered under the laws of this State.

The Constitution of this State in Article 12, Section 6, provides:

“No corporation shall issue stocks or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.”

Analyzed, this section of the Constitution means that the corporation cannot issue its stock except for: (1) Money paid to the corporation; (2) labor done for the corporation; (3) property actually received by the corporation. The courts have held that the money paid to the corporation must not be less than the par value of the stock and that where paid up stock of a corporation has been issued to subscribers for double the amount of their subscription, they are liable for the unpaid part of their stock if debts were contracted by the corporation before they transferred the stock.

Nenny vs. Waddill, 25 S. W., 308.

Mathis vs. Pridham, 20 S. W., 1015.

Thompson on Corporations, Secs. 1652, 1653, 1578, 1579, 1582, 1583, 1685.

The term “paid up, non-assessable stock” can only mean stock that is made non-assessable by reason of the fact that the amount for which it calls has been fully paid. Street Railway Co. vs. Adams, 87 Texas, 130.

The word “property,” as used in the Constitution, must be something substantial; the terms in which this section of the Constitution referred to is expressed show that it was intended that the assets of the corporation should be something substantial and of such a character that they could be subjected for the payment of claims against the corporation, as well as to secure the shareholders in their rights in the capital stock. O’Bear-Nester Glass Co. vs. Antiexplo Co., 101 Texas, 431.

The term “money paid” is very definite and plain and

does not mean that stock can be sold for money to be paid, but must be sold for cash. Of course, it can be paid for in installments, but it must be paid for in money, or in property actually received *or by labor actually performed* for the company. *San Antonio Irrigation Co. vs. Deutschmann*, 102 Texas, 201.

It is obvious also that the property which the corporation is authorized to receive in payment of its stock must be such property as the corporation has authority under its charter to take and hold. If the property is not necessary to the conduct of its authorized business, then any contract for its purchase, either for stock or cash, is, unless expressly permitted by its charter, *ultra vires*, and stock issued therefor would not be paid up stock.

Conyngton on Corporate Organization, Sec. 222.

Powell vs. Murray, 3d Appel. Div. (N. Y.), 273.

Montgomery vs. Brush El. Co., 48 App. Div. (N. Y.), 12.

Thompson on Corporations, Secs. 1604, 1605, 1606, 1643.

Mr. Thompson in his work thus states the rule:

"A corporation cannot accept payment for shares in specific property, unless such property is of a kind which the corporation is authorized by law to take and hold. Thus a railway company which is not authorized to receive and hold lands and goods cannot accept payment for its shares in lands or goods. (Sec. 1643.)

* * * And even where the statute or other governing instrument, by its terms, requires payment in money, yet unless the language is such as to import a prohibition of anything but money, the courts are generally agreed that payment may be made in any kind of property which the corporation may lawfully purchase in the prosecution of its business, provided it be done in good faith. The reason is that the law is practical in its requirements and does not require the parties to such a contract to do the vain thing of the subscriber finding

money wherewith to pay his subscription, and the corporation then handing the money back to him in payment of property which it desires to purchase of him. That circumlocution may be avoided, and the property may be conveyed directly in satisfaction of what the subscriber owes for his shares. The general rule, then, is that if 'a man contracts to take shares, he must pay for them,' to use a homely phrase, 'in meal or in malt.' He must either pay in money or in money's worth; if he pays in one or the other, that will be a satisfaction. He may pay in any kind of property or services which the corporation has power to purchase for its use, provided the transaction be had in good faith and the property conveyed at a fair valuation." Thompson on Corporations, Sec. 1605.

It will appear from a consideration of these authorities that the money referred to in the Constitution must be paid to the corporation; that the property referred to must be such property as the corporation can use and be delivered to the corporation; and it would follow, we think, that the labor to be performed, as referred to in the Constitution, must be labor performed for the corporation. Since we have concluded that the labor performed by a promoter in promoting the corporation and the expenditures incurred by him outside of attorney's fees and preparation of the charter, charter fees, franchise tax fees, permit fees, and stationery and supplies are incurred, not for the corporation but for the incorporators, it must follow that the class of expenditures herein generally defined as promoters fees, and being the first class expenditures referred to in Section 1, Chapter 32, *supra*, are not expenditures or services for and on behalf of the corporation, and, therefore, can form no part of the capital stock of the corporation; for the reason that this class of expenditures or service are not money paid to the corporation nor property received by the corporation nor labor done for the corpora-

tion, and stock, under our Constitution, could not be issued in payment therefor.

It follows from the foregoing that commissions, promotion fees, organization fees, and other expenses incident, directly or indirectly, to the sale of the shares of the capital stock of the corporation cannot be paid out of the par value of the capital stock of the corporation; and, if such fees are paid by the corporation, then they must be paid by an amount collected over and above the par value of the capital stock of the corporation. Attorney's fees, charter fees, franchise taxes, permit fees, and expenditures for stationery and supplies, although incurred prior to the filing of the articles of incorporation, may be paid out of the capital stock of the corporation after its charter is granted.

We believe that the foregoing answers substantially the various questions propounded to us by your department.

Yours very truly,

C. M. CURETON,

Assistant Attorney General.

This opinion has been passed upon, approved by the department in executive session, and is now ordered recorded.

B. F. LOONEY,

Attorney General.

NOTE.—The correctness of the conclusions reached by the Attorney-General on the last point considered—the sixth—in the foregoing opinion, may be questioned. The statute deals with the expenses of promotion, commissions on stock sales, etc., incurred before as well as after the corporation was created, and apparently subjects both to the same rule. They are limited in amount, are required to be disclosed to the purchaser of stock, and must be made known to the Secretary of State as a prerequisite for obtaining permit to sell stock. Before the passage of this Act such expenses incurred after incorporation were debts which it could be compelled to pay out of its capital. Those incurred before incorporation were not its debts and it could not ordinarily be held for them. See note, ante, pp. 25-26. Also *Weatherford, etc., Ry. Co. vs. Granger*, 86 Texas, 350. But this would hardly be the case, even under the above decision, where such payment was contemplated in the original plan of organization, and the stock purchased with distinct notice of this fact; and this announced plan and notice to purchasers of stock is secured by the present statute.

MINERAL RIGHTS IN LAND—OWNERSHIP, TRANSFER AND MINING.

1.

WHAT ARE MINERALS.

All constituents of the earth's crust, whether solid, liquid, or fluid. Thus petroleum is a mineral. *Texas Co. vs. Daugherty*, Sup. Ct., 176 S. W., 717; S. C. in Civ. App., 160 S. W., 129; *Swayne vs. Lone Acre Oil Co.*, 98 Texas, 597, 86 S. W., 740, affirming 78 S. W., 380; *Southern Oil Co. vs. Colquitt*, 28 Texas Civ. App., 292; 69 S. W., 169. And also natural gas. *Texas Co. vs. Daugherty*, Sup. Ct., 176 S. W., 717; S. C. in Civ. App., 160 S. W., 130; *Ohio Oil Co. vs. Indiana*, 177 U. S., 190; *Westmorland Etc. Nat. Gas Co. vs. DeWitt*, 130 Pa. St., 465, 5 L. R. A., 731.

2.

OWNERSHIP.

Like other minerals, oil and natural gas belong to the owner of the soil. *Southern Oil Co. vs. Colquitt*, 28 Texas Civ. App., 292, 69 S. W., 169. They pass by the State's patent to its grantee. *Heil vs. Martin*, 70 S. W., 430; *State vs. Parker*, 61 Texas, 265. And by the ordinary form of conveyance of title to the land. But being part of the soil (*Benavides vs. Hunt*, 79 Texas, 383, 15 S. W., 396) conveyance must be in writing. Rev. Stats., art. 1103. It should be acknowledged and recorded. Rev. Stats., art. 6824. And where the land is homestead the wife must join and make privy acknowledgement. *Southern Oil Co. vs. Colquitt*, 28 Texas Civ. App., 292, 69 S. W., 169. Title to the minerals, such as oil and gas, where separated from that to the soil by conveyance, is still an interest in real property and taxable as such. *Texas Co. vs. Daugherty*, Sup. Ct., 176 S. W., 717; S. C. in Civ. App., 160 S. W., 129.

But the title of the owner of the soil is modified by the peculiar nature of the mineral in the case of petroleum and natural gas. He has the exclusive right to seek them in his own soil and reduce them to possession. But until he has done so he has no recourse against any other proprietor who, by tapping the same reservoir by borings on his own land, draws them away from their situs and reduces them to his own possession. *Ohio Oil Co. vs. Indiana*, 177 U. S., 190. The same rule is recognized in Texas in regard to subterranean waters which flow or percolate through the soil; and it is held that the right of any proprietor to draw them away from the land of others into his own wells is absolute, and not subject to the limitation of reasonable use or quantity. *Houston & T. C. Ry. Co. vs. East*, 98 Texas, 146, 81 S. W., 279.

This peculiarity in the nature of fluid or liquid minerals has an important bearing on the question of the right of the State to regulate oil and gas wells (*Ohio Oil Co. vs. Indiana*, *supra*) and also upon the construction and effect of leases and contracts for mining them, as will appear by cases hereafter cited on that subject. The right to such migratory and nomadic minerals has been quaintly likened by the courts to that in animals *ferae naturae*, which the proprietor of the land has the exclusive privilege of hunting and capturing on his own premises, but no claim upon them when they stray to the lands of another. *Ohio Oil Co. vs. Indiana*, *supra*.

But such ownership of the oil and gas, when conveyed separately by the owner of the soil to another, though under the form of a mining lease giving rights to prospect, develop and mine for a royalty, is not a mere license giving the grantee no interest in the minerals till mined and reduced to possession, but a grant to an interest in the land, and taxable by the State as such. *Texas Co. vs. Daugherty*, Sup. Ct., 176 S. W., 717; S. C. in Civ. App., 160 S. W., 129.

JOINT OR COMMON OWNERS.

Tenants in common being equally entitled to the possession and use, either may open and work mines, or convey to others his right to do so. But this is subject to the rights of his cotenant who would be entitled to his proportion of the proceeds after deducting the cost of production. *Swayne vs. Lone Acre Oil Co.*, 85 Texas, 597, 86 S. W., 740, affirming *Lone Acre Oil Co. vs. Swayne*, 78 S. W., 380. But where such cotenancy was only to the extent of a life interest, and without the right to mine (which would be to commit waste, and be permissible to the life tenant only where his estate was created by deed, not where created by operation of law, as by inheritance) such life tenant would have no interest in the product of the mines. *Swayne vs. Lone Acre Oil Co.*, 95 Texas, 597, 86 S. W., 740.

TENANTS FOR YEARS.

The ordinary tenant for years, unless rights to minerals were specifically conferred by his lease, has no right to open mines or confer mining rights on others, since he has no right to commit waste. *Swayne vs. Lone Acre Oil Co.*, *supra*.

OWNERS OF EASEMENTS.

One who owns a mere easement, or right of way over land, has no right to its minerals and can convey none. Thus a city could not sink wells in its public streets to obtain a supply of water, where the title to the fee was in an adjoining lot owner. *O'Neal vs. City of Sherman*, 77 Texas, 182, 14 S. W., 31. This case followed *Dubuque vs. Benson*, 23 Iowa, 248, a case of mining lead in the street. A different ruling was made in that State in a case of a coal mine where the fee to the street was in the city. *Des Moines vs. Hall*, 24 Iowa, 234. So it has been held that a railway company could confer no right to mine for

oil on land over which it had a mere right of way, not owning the fee. *Right of Way Oil Co. vs. Gladys City Oil G. & M. Co.*, 106 Texas, —, 157 S. W., 737, affirming *Gladys City Oil G. & M. Co., vs. Right of Way Oil Co.*, 137 S. W., 171; and this though the deed conveying the right of way granted "for the purpose of constructing, maintaining and operating its railroad" the right to take and use all "timber, stone, earth and minerals" found within the right of way granted. This was held to refer only to surface minerals, not to oil, though the introduction of oil burning engines had rendered that mineral useful in operating. (*Id.*) Conveyances of land bounded on streets, alleys or public roads carry title to the center of such highway, if the grantor so owns. *Cocke vs. Texas & N. O. Ry. Co.*, 46 Texas Civ. App., 303, 103 S. W., 407; *Wiess vs. Goodhue*, 46 Texas Civ. App., 142, 102 S. W., 793; *Day vs. Chambers*, 62 Texas, 190; *Mitchell vs. Bass*, 26 Texas, 372. But otherwise as to boundary on right of way of railway. *Couch vs. Texas & P. Ry. Co.*, 99 Texas, 464, 90 S. W., 860.

RIVERS AND BAYS.

Riparian proprietors on seas or bays, and on tide water streams, hold only to line of ordinary high tide. *Galveston vs. Menard*, 23 Texas, 349; *Galveston C. S. Bathing Co. vs. Heidenheimer*, 63 Texas, 559; *Roseborough vs. Picton*, 12 Texas Civ. App., 113, 34 S. W., 791; *De-Merit vs. Robison*, 102 Texas, 358, 116 S. W., 796. The same rule applies to streams not navigable at common law, but declared so by statute; that is, those retaining an average width of thirty feet (*Rev. Stats.*, art. 5338). The rights of riparian proprietors thereon end at the water line, and the State retains title to the bed of the stream. *City of Austin vs. Hall*, 93 Texas, 591, 57 S. W., 563. The State has made provision for sale of its mineral lands (*Rev. Stats.*, arts. 5904-5922). But these laws do not apply to or permit sale of a tract on the coast, part of a shallow bay covered by the flow of the tide but bare

at ebb. *DeMerit vs. Robison*, 102 Texas, 358, 116 S. W., 796. Presumably this decision would be followed as to the beds of streams navigable by statute. The State was held entitled to grant, by special act, land under a tide water bayou. *Baylor vs. Tillebach*, 20 Texas Civ. App., 490, 49 S. W., 720. But its grant is not presumed to have that effect. *Roseborough vs. Picton*, 12 Texas Civ. App., 34 S. W., 791. And, as shown above, such grants are not authorized by its general laws. But as to what rights the public may exercise while the title to the bed of a stream remains in the public (in this case taking gravel) see *Goar vs. City of Rosenberg*, 53 Texas Civ. App., 218, 115 S. W., 653.

3.

SEPARATION OF MINERAL RIGHTS FROM TITLE TO SOIL BY SALE OR LEASE.

The title to the minerals may be separated from the general title to the soil by transfer by its owner of the minerals only. But while they remain in the soil they still constitute real property. *Staley & Barnsdall vs. Derden*, 121 S. W., 1136; *Texas Co. vs. Daugherty*, Sup. Ct., 176 S. W., 717. And can only be conveyed in such manner as the land itself, that is by deed in writing. *Benevides vs. Hunt*, 79 Texas, 15 S. W., 396. Where the land is homestead the wife must join and privily acknowledge a conveyance of the mineral rights. *Southern Oil Co. vs. Colquitt*, 28 Texas Civ. App., 292, 69 S. W., 169.

ABSOLUTE SALE.

The transfer may be by an absolute and unconditional sale of the mineral rights by the proprietor of the soil for a fixed price. In such case the purchaser is under no obligation to develop the mineral resources of the land; and, on the other hand, may be compelled to pay the purchase money whether any oil is found or not, as was ruled in *Whited vs. Johnson*, 167 S. W., 812, where

the contract was to pay \$10,000 for "all of the oil, gas, coal and sulphur in and under" the tract "that may be found by drilling and mining operations which may hereafter be conducted on said land."

CONDITIONAL CONTRACTS AND LEASES.

A more common form of contract for mineral rights is that of a sale or lease for a term of years in which the proprietor retains an interest in the development, usually by way of a royalty, or proportion of the net proceeds of the mining to be conducted by the lessee. Such agreements are upon conditions either expressed in or implied from the contract. Where there is an express promise as to the things to be done by the lessee he forfeits his rights by failure to perform, though such performance was not the sole consideration. Where there is no express promise to develop, or perform any particular work, but the sole or principal consideration is the development of mineral rights and payment of royalties to the lessor from the product of the well, there is an implied undertaking by the lessee to prosecute prospecting and mining with reasonable diligence and he forfeits his rights by failure to do so. Numerous cases in Texas illustrate the application of these principles.

Thus in *Emery vs. League*, 31 Texas Civ. App., 474, 72 S. W., 603, in which writ of error was refused, the consideration was \$10 paid, and agreement to prospect and develop and pay lessor 12 1-2 per cent of gross output. The lease was from a tenant in common with others and the lessee was to secure partition before commencing operations, which were to be on the lessor's part. He also reserved the right to abandon operations if found unprofitable. It was held that this was a mere unilateral or option contract; the lessee acquired no rights until, within a reasonable time, he commenced performance; he having failed to even secure the necessary partition, the lessor was entitled to cancellation of the lease.

Where the contract is unilateral or optional, time is of the essence of the contract. *Presidio Mining Co. vs. Bullis*, 68 Texas, 581, 4 S. W., 860.

Where the undertaking of the lessee was to develop within six months, as a condition of acquiring rights, a paying well, the contract defining that term as one which produced a stated number of barrels per day, and he brought in a well producing oil in paying quantities, but to a less amount, there was no performance and he forfeited his rights. *McLean vs. Kishi*, 173 S. W., 502.

In *Hodges vs. Brice*, 32 Texas Civ. App., 358, 74 S. W., 590, consideration of \$4 was recited but the principal consideration was the lessee's promise to develop, and to commence boring a well in six months. He failed to do anything for several years, and it was held that he acquired no rights and had no interest requiring him to be made a party to a suit to foreclose a lien on the land.

In *Roberts & Corley vs. McFadden, Weiss & Kyle*, 32 Texas Civ. App., 47, 74 S. W., 105 (writ of error refused) there was no consideration for a lease of oil rights other than the lessee's agreement to develop. But it was provided that he could terminate the lease at any time. This was held a unilateral contract, a mere option, under which he acquired no rights till performance. It did not cast a cloud on lessor's title; he might annul it at any time; and he did so by selling the land to another prior to any performance. Similarly in *J. M. Guffey Pet. Co. vs. Oliver*, 79 S. W., 884, a lease which was terminable at the will of the lessee on payment of \$4. was held terminable by the lessor also, to whom no such right was expressly reserved, on repaying the cash consideration paid and compensating the lessee for expenditures made. See also *Owens vs. Texarkana Pet. Co.*, 169 S. W., 192, post.

In *National Oil & Pipe Line Co. vs. Teel*, 95 Texas, 591 (in Ct. of Civ. App., 67 S. W., 545, where contract is given in full) the proprietor sold the mineral rights for an interest in the mined product, the grantee undertaking to drill within two years, and, failing that, having

the right to prevent forfeiture by paying a yearly rental of \$100. This was held to be unilateral, giving the grantee no interest in the minerals but a mere option or right to acquire such interest by performance. This being a mere equitable right, even if supported by an independent consideration, an assignee took it subject to any defense the grantor had against the grantee, such as fraud in procuring the contract.

Somewhat similar was the case of *Witherspoon vs. Staley*, 156 S. W., 557 (writ of error refused). The oil rights were conveyed for \$25 and royalties to be paid. It was to be forfeited if operations were not commenced in six months; but this the grantee could prevent by paying \$25 every sixty days. He was not bound to do either. This was held unilateral and a mere option; being optional as to one it was, while unperformed, optional as to both; so the grantor could refuse to keep it alive by accepting further payments when no work had been done.

Distinguishable from the foregoing case is the earlier one of *Great Western Oil Co. vs. Carpenter*, 43 Texas Civ. App., 229, 95 S. W., 57 (writ of error refused). This was an oil and gas lease for royalties; the lessee undertook to sink a well in a given time, but was entitled to prevent forfeiture for failure by renewing lease for another year on payment of 10 cents per acre rental. This was held not unilateral since the performance of his undertaking was not optional with the lessee, as in the cases of *Hodges vs. Brice*, *Emery vs. League*, *Roberts vs. McFadden*, and *Oil Co. vs. Teel*, *supra*, which are all distinguished.

Forney vs. Ward, 25 Texas Civ. App., 443, 62 S. W., 108, involved the question of what would be a commencement of drilling, where time therefor was limited by the terms of the lease. It was held a question of fact. The lessee had done nothing but haul lumber onto the premises for the erection of a derrick, on the last day allowed for beginning.

IMPLIED OBLIGATION TO DEVELOP.

In *J. M. Guffey Petroleum Company vs. Oliver*, 79 S. W., 884 (writ of error refused) it was held that a lease for mining oil and natural gas in consideration of royalties to the lessor, was on an implied condition of diligence, good faith and reasonable development, and could be forfeited for lessee's failure therein.

The foregoing case cites and follows *Benavides vs. Hunt*, 79 Texas, 383, 15 S. W., 396, which was a lease of right to mine coal, giving lessor one-third of the net profits. It was there held that, though there was no express agreement by the lessee to operate the mine if discovered, such promise was implied in case coal was found which could be mined at a profit.

In *J. M. Guffey Pet. Co. vs. Jeff Chaison Townsite Co.*, 48 Texas Civ. App., 555, 107 S. W., 609, the lessee had sunk a paying well on the property, and was under no express contract to sink others. But it was held to be his duty to use reasonable diligence and care to protect the property against the drawing off the supply of oil by other wells upon adjoining tracts, and to sink additional wells on the property for this purpose, if necessary. The suit sought damages, not forfeiture, for this default.

Owens vs. Corsicana Pet. Co., 169 S. W., 192. The land was leased for years for the production of oil, gas and coal, in consideration of \$28.20 cash and of a royalty of one-eighth to the lessor. The lessee was to bore a well in one year or to pay a quarterly rental of \$28.20, and could terminate the lease at any time by paying \$5, the lessor disclaiming any right to terminate the lease himself on account of this provision. Held that the \$5 to be paid for surrender of the lease was a merely nominal consideration. The contract was unilateral and a mere option. If terminable by one party it was terminable by the other. The lessee drilled no well on the land, but sunk wells on tracts adjoining it upon three sides, thus drawing off the supply from this land. The lessor, it

was held, could refuse the quarterly rent tendered and forfeit the lease. The primary consideration was to obtain for the lessor the advantage of development and the lessee was bound to use diligence therein. Nearly all Texas authorities are reviewed and followed or distinguished. But writ of error was granted in this case and it is now pending (*Cor. Pet. Co. vs. Owens*) in Supreme Court.

EFFECT OF COMPLIANCE BY LESSEE.

It has already appeared that a contract purporting to convey to the lessee the right to oil under the land and to sink wells and take it therefrom, if it is not an absolute sale, as in *Whited vs. Johnson*, 167 S. W., 812, noted above, but one where the lessee or grantee is to mine on payment of royalties, has been held to confer upon him no title to the oil itself, but only a right to acquire title by performing the express or implied obligations of the contract on his part (*Emery vs. League*, *Hodges vs. Brice*, *Roberts & Corley vs. McFadden*, *Weiss & Kyle*, *National Oil & Pipe Line Co. vs. Teel*, and other cases ante. But compare *Texas Co. vs. Daugherty*, Sup Ct., 176 S. W., 717.) We should rather, perhaps, to be accurate, recognize three classes of these transfers: (1) an absolute sale of the mineral rights; (2) a transfer of a present right to the minerals, but on conditions subsequent, under which the grantee forfeits his rights by failure to perform them; (3) transfers giving no present right to the minerals, but a right to acquire title to them by performance of certain conditions. Of the first class is *Whited vs. Johnson*, supra; of the second, *Texas Co. vs. Daugherty*, supra; of the third, *National Oil & P. L. Co. vs. Teel*, supra. But whether the conveyance be of the second, or of the third class, where the grantee has performed all that was required of him under the contract, he then acquires an interest in the oil under the land.

Thus, a lessee who was bound by his contract to sink

a well within a certain time did so and it proved not a paying well. In that event his contract gave him the right to sink other wells but did not require him to do so. He did not drill any others; but the lessor did and obtained a paying well. It was held that the lessee was entitled to his proportion, under the contract, of the yield of this well less the expenditures of the lessee in its production. *O'Neil vs. Sun Co.*, 123 S. W., 172. Writ of error refused.

A lessee drilled a well and obtained oil in paying quantities. He drilled two others which were failures. His contract did not bind him to do more. The first well, after it had been pumped for some time, with due payment of royalties, ceased to be profitable, and he abandoned its operation and sunk no more wells. The lessor sued to cancel his lease. It was held that, having performed all the contract required of him he acquired rights to the oil under his lease for its full term of 20 years, and it could not be forfeited because he abandoned work. *McAfee vs. Grubb*, 164 S. W., 925, following *O'Neil vs. Sun Co.*, *supra*. But writ of error was granted in this case, and it is now pending (*Grubb vs. McAfee*) in Supreme Court.

A lessee corporation which had agreed to compromise a suit for cancellation of its lease, consenting to such cancellation, could not avoid such agreement by showing that it had previously given another an option to purchase the lease, or that the controlling interest in its stock had changed hands since the agreement. *Southern Oil Co. vs. Wilson*, 22 Texas Civ. App., 534, 56 S. W., 429.

It is evident that some confusion still exists in the rulings of the appellate courts as to the construction and effect of transfers or leases of mineral rights. It is to be hoped that the subject may be cleared up by the decisions of the Supreme Court in the cases of *Grubb vs. McAfee* and *Corsicana Pet. Co. vs. Owens*, which are still before that court on writ of error granted.

OPTIONS AND UNILATERAL CONTRACTS.

A contract by which the owner of property agrees with another person that he shall have the right to buy the property at a fixed price within a certain time, is an option; and, if based upon a valuable consideration, such contract is binding and may be enforced. *Williams vs. Graves*, 7 Texas Civ. App., 366, 26 S. W., 334. But time is of the essence of the contract, and the vendee must comply with the conditions of his purchase within the period limited. *Johnson vs. Portwood*, 89 Texas, 245, 34 S. W., 596; *Washington vs. Rosario Mining, Etc., Co.*, 28 Texas Civ. App., 430, 67 S. W., 459; *Killough vs. Lee*, 2 Texas Civ. App., 262, 21 S. W., 970; *Viser vs. Rice*, 33 Texas, 139.

As to whether the payment or recital of payment of a merely nominal consideration, such as one dollar, will support such a contract, see *National Oil & P. L. Co. vs. Teel*, 95 Texas, 586, 68 S. W., 979, affirming 67 S. W., 545; *Great Western Oil Co. vs. Carpenter*, 43 Texas Civ. App., 229, 95 S. W., 57; *Cobb vs. Beall*, 1 Texas 342, 347; *Davis vs. Turner*, 26 Texas, 98.

A promise may furnish valuable consideration for a promise. But it must be an absolute agreement; and if performance of the undertaking of either party is only optional with him, it alone will not supply a consideration for the other's contract. In such case, both must be bound or neither will be. *James vs. Fulcrod*, 5 Texas, 519; *Arnold vs. Chamberlain*, 14 Texas Civ. App., 634, 39 S. W., 201; *Lane & Saylor vs. Scott & Culver*, 57 Texas, 367; *Williams vs. Graves*, 7 Texas Civ. App., 365, 26 S. W., 334.

But if an independent valuable consideration sufficient to support the contract has been paid, the fact that further undertakings by the purchaser were not absolute but merely things which were to be done at his option, would not render the contract void as being an option or unilateral contract without consideration. If the matters left optional with him were conditions to his acquiring or retaining the rights granted, either expressly or

by implication, he might forfeit his rights by failure to perform, but the question becomes then one of forfeiture of a conditional grant, rather than of the validity of an optional or unilateral contract. This distinction may not always have been kept in mind in the language of the decisions above reviewed. Compare: *Presidio Mining Co. vs. Bullis*, 68 Texas, 581, 4 S. W., 860; *Emery vs. League*, 31 Texas Civ. App., 474, 72 S. W., 603; *Roberts & Corley vs. McFadden, Weiss & Kyle*, 32 Texas Civ. App., 47, 74 S. W., 105; *National Oil & P. L. Co. vs. Teel*, 95 Texas, 586, 68 S. W., 979; S. C., 67, S. W., 545; *Witherspoon vs. Staley*, 156 S. W., 557; *Great Western Oil Co. vs. Carpenter*, 43 Texas Civ. App., 229, 95 S. W., 57; *Owens vs. Corsicana Pet. Co.*, 169 S. W., 192.

The suggestion may be ventured that the fact that the purchaser is not bound to complete the performance which would give him title, does not render his contract either void or voidable, if there is a consideration to support it other than such performance. And this would be true although the performance was the main consideration moving the seller or lessor to enter into the contract. The fact that it was the main consideration would, however, have an important bearing upon the time and circumstances under which the grantor would be entitled to treat the grantee's contract as forfeited by his non-compliance with the conditions. Though the existence of a valuable independent consideration might suffice to support an optional contract, that is a grant conditioned on subsequent performance by the grantee of things which he is left free to perform or not, the time for exercising an option, as has already appeared, must be fixed and reasonable, and its reasonableness might depend on the subject matter dealt with and the attendant circumstances. This consideration might have some bearing on a case like that of *Owens vs. Corsicana Pet. Co.*, above mentioned, where the lessee postpones development by paying the alternative rental, and meanwhile draws off the oil into his wells on adjoining land.

This subject has recently been considered by the Su-

preme Court of the United States in *Guffey vs. Smith*, (April 5, 1915) 35 Sup. Ct. Reporter, 526, 237 U. S., 101, reversing *Smith vs. Guffey*, 120 C. C. A., 436, 202 Fed., 106. The court hold the lease (similar to that in the *Owens case*, *supra*) not voidable by the lessor, though a right to terminate it was reserved to the lessee,—following the rule of property established by the decisions in Illinois, where the case originated. The lessee was held entitled to injunction against mining operations by the lessor or a subsequent lessee from him, and to an accounting for the profits already accruing therefrom.

The decision turned upon the question whether such an optional right to terminate, reserved to the lessee, though conceded not to create, at law, a tenancy at will terminable by the lessor also, was so inequitable and lacking in mutuality as to preclude the lessee from maintaining the action for equitable relief by injunction. The court held that it was not, and awarded the lessee such relief, refusing, in this, to follow rulings of the Supreme Court of Illinois to the contrary.

This decision and the numerous cases cited therein and in briefs of counsel afford a good starting point for investigating the result of the rulings in other states upon this and related questions growing out of such leases. They are numerous and not harmonious; and a review of them is beyond the scope of this work, which is not designed to go beyond a statement of the law as adjudged in Texas.

CONTRACTS FOR OPERATION.

Concerning contracts other than those between the owner of the soil and his grantee or lessee, a few decisions may be noted:

An oil company has been held entitled to lease to another its real property, though it has itself begun mining thereon, to be operated for it by the lessee for a royalty. *Stark vs. Guffey Pet. Co.*, 80 S. W., 1080.

A contract by one oil company to operate the well of another, and to take out and pay for a fixed amount

monthly, was for the protection of the owning company from loss by exhaustion of the supply by others. Its offer to take out and pay for the same amount subsequently did not cover this. And an agreement for the cancellation of the lease did not relieve it from the liability previously incurred in operating under it. *Alabama Oil, Etc., Co. vs. Sun Co.*, 99 Texas, 606, 92 S. W., 253, reversing 90 S. W., 202.

An oil company contracted to supply fuel oil to certain industries, but it was to be relieved from its undertaking in case of "failure of oil wells." Under the circumstances shown this was construed to mean failure of their own wells to flow by natural pressure. They were not bound to continue the supply, at the terms named, when they could obtain it from their wells only by pumping. *San Jacinto Oil Co. vs. Ft. Worth, Etc., Power Co.*, 41 Texas Civ. App., 293, 93 S. W., 173.

A contract for drilling an oil well, with provision for the proprietor continuing the work after the contractor abandoned it, was construed in *Hammond vs. Decker*, 102 S. W., 453.

4. MINERAL RIGHTS IN PUBLIC LANDS.

The United States acquired no title to the public lands of Texas by its admission to the Union. Articles of Annexation, Sayle's Early Laws, Vol. 1, Art. 1531. Consequently the mining laws of the Federal Government, applicable only to its own lands, are not in effect here. The acquisition of mineral lands and mining rights in Texas is regulated by its own laws. Revised Statutes, Articles 5904-5922, ante. The ownership of minerals in the soil underlying bays and navigable streams has been considered under paragraph 2 above.

The early policy of the State reserved the minerals in its grants of lands. *Cowan vs. Hardeman*, 26 Texas, 217. But these mineral rights were later released to the owners of patented land. Const. 1866, Art. 7, Sec. 39; *State vs. Parker*, 61 Texas, 265.

The Act of April 4, 1883, which reserved the minerals in school land to the State, did not provide for the sale of the minerals separately, but for mining claims to be worked for a royalty to the State. The Act of March 29, 1889, authorized the sale of mineral bearing lands with the minerals, but not sale of the minerals separately. Where land was sold as grazing land in December, 1887, though the minerals should be held not to have passed by the sale, there was no law in 1900 authorizing another to enter a mining claim upon it or to buy the minerals from the State separate from the land. *Heil & Schuster vs. Martin*, 96 Texas, 209, 71 S. W., 814.

These regulations were succeeded by the present law, the Act of 1895, permitting prospecting and the sale of the land with the minerals. Decisions as to the right to purchase under this Act are collected in the note to Article 5912, Rev. Stats., ante.

5. EMPLOYER'S LIABILITY.

Oil and gas companies, in their relations to their employes, come under the provisions of the Act of April 16, 1913, commonly known as the Employer's Liability Law. Laws 1913, pp. 429-438. By Section 1 of this Act, contributory negligence of an employe injured or killed is no longer a full defense to actions therefor, but merely a ground for abatement in the amount of damages. It is no longer a defense that the injury was caused by the negligence of a fellow servant. Nor is the defense of assumed risk allowable except when the injury was intentionally incurred by the employe.

Companies or individuals employing more than five employes may become members of the "Texas Employers' Insurance Association", and in this case, by the payment of premiums for insurance of their employes against accident, recourse of the latter for injury, or of their heirs in case of death from injury, may be had only against such insurance fund, the right thereto being determined by the "Industrial Accident Board", or by action against such Board.

TAXATION.

STATE AND COUNTY.

The recent important ruling on the liability of the estate conveyed by an oil lease to taxation as an interest in real property has already been noted. *Texas Co. vs. Daugherty*, Sup. Ct., May 21, 1915; 176 S. W., 717. In that case the Texas Oil Co. had been taxed as owner of interests in various tracts of land in which it held oil and gas rights by leases, all substantially to the same effect. These instruments, for a valuable consideration, "granted, bargained, sold and conveyed all the oil, gas, coal, and other minerals in and under" the respective tracts of land. They gave the usual drilling and mining rights, conditioned on the beginning of drilling operations by the grantee within one year, with the alternative of continuing the contract in force for three years by payment of an annual rental. On development of a paying well, grantee's rights were made absolute, subject to payment of royalties on the oil and gas produced, for the period of twenty years, and so much longer as oil or gas continued to be produced in paying quantities. Each instrument concluded with the following clause:

"This lease is not intended as a mere franchise, but is intended as a conveyance of the property and privileges above described, for the purposes herein mentioned and it is so understood by all parties hereto."

The owners of the fee had rendered these lands for taxation at their fair market value, subject to the rights conferred on the lessees by the contracts, and considering their value as oil bearing lands, present or prospective, as limited to the royalties reserved in the leases. The rights of the lessee were taxed separately as interests held by it in the land.

The oil company claimed that oil and gas, owing to their fugitive character, were not capable of being conveyed in situ, the owner of the soil having himself no absolute title to them, but merely a right to acquire

title by reducing them to possession and confining them. That until severed and extracted from the soil these substances were incapable of ownership as property; and that the conveyances passed no title to them, but merely a privilege of so acquiring title.

This claim was not allowed. The court held that oil and gas were minerals, and a part of the soil; that the transfer of them, like that of any other minerals, was a conveyance of an interest in the soil; and that the estate acquired by the grantee was taxable as an interest in land owned by it. The authorities on the subject are fully reviewed, and the distinction is drawn between leases which convey an interest in the realty, and those which confer a mere privilege of acquiring title to such elements when severed from the soil.

For taxation by the State other than the ad valorem tax on real and personal property, see the statutes, ante, pp. 64-67.

UNITED STATES INTERNAL REVENUE.

By the Act of Congress of October 22, 1914, revenue stamps are required to be affixed to various documents by the person signing or issuing them, under penalty of a fine not to exceed \$1000 or imprisonment not exceeding six months, or both. This Act is too recent to have met with any extensive judicial or departmental construction; but we append to the portions of it quoted below a digest of rulings under similar provisions of the Act of 1898, taken from a circular recently issued by the Acting Commissioner of Internal Revenue. The instruments relating to transactions in oil and gas which require such stamps, as enumerated in Schedule A of said Act, with the rulings mentioned, are as follows:

Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and fourteen, by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents, and on each original issue, whether on organization or

reorganization, of certificates of stock by any such association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each \$100 of face value or fraction thereof, 2 cents; *Provided*, That it is not intended by this act to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers.

Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, and on all transfers thereof, on each \$100 of face value or fraction thereof, 2 cents.

Certificate of any description required by law not otherwise specified in this act, 10 cents.

Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this act, 10 cents.

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance thereon, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof in excess of \$500, 50 cents: *Provided*, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, 10 cents.

Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, 25 cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service.

(1) When a bond is said to be issued. Whenever a corporation issues a bond, and there accrues to the corporation a benefit or consideration for issuing the same, the bond is subject to taxation. (Vol. 2, Treas. Dec. (1898), No. 20156.)

(2) Stamp tax; certificates of stock; sales and trans-

fers of certificates of stock. (Vol. 2, Treas. Dec. (1898), No. 19607.)

(3) In reckoning the stamp tax on transfers of certificates of shares, the tax is reckoned on the face value. (Vol. 2, Treas. Dec. (1898), No. 19710.)

(4) Transfers of shares or certificates of stock; how stamps are to be attached; stamp tax to be reckoned on face value of certificate. (Vol. 2, Treas. Dec. (1898), No. 19888.)

(5) Transfers of stock from guardian to ward subject to taxation. (Vol. 2, Treas. Dec. (1898), No. 20070.)

(6) Preferred stock issued in lieu of common stock not taxable when there is no change of ownership. (Vol. 1, Treas. Dec. (1899), No. 20694.)

(7) Where brokers acting in behalf of their principals buy stock and receive stamped bills of sale in their own names, they may transfer such stock on the books of the corporation to the names of their principals without additional stamp tax. (Vol. 1, Treas. Dec. (1899), No. 20727.)

(8) Certificates of stock of a foreign corporation when sold or delivered within the United States are liable to the same tax as certificates of stock of any domestic corporation. (Vol. 1, Treas. Dec. (1899), No. 20793.)

(9) "Puts" and "calls." The Attorney General decided that the former are not subject to tax, but that the latter, being agreements to sell, are taxable. (Vol. 1, Treas. Dec. (1899), No. 21151.)

(10) When a certificate of stock is presented for transfer and power of attorney on the back thereof is dated prior to July 1, 1898, although the name of the transferee is not filled in until after that date, both the power of attorney and the certificate are required to be stamped. (Vol. 1, Treas. Dec. (1899), No. 21277.)

(11) No tax on the closing of a stock transaction caused by margin being exhausted because of market going against speculator. (Vol. 2, Treas. Dec. (1899), No. 21707.)

(12) The circumstances under which the memoranda issued by brokers evidencing the sale or purchase of stock need or need not be stamped. (Vol. 2, Treas. Dec. (1899), No. 21711.)

SALES OF TRANSFERS OF STOCK.

Following rulings are taken from Circular No. 503, Revised November 14, 1898:

(13) In reckoning the stamp tax on transfer of certificate of stock, the tax is reckoned on the face value. In reckoning this tax, the fact that only part of the face value of shares subscribed for and issued has been paid by the shareholders is not to be taken into consideration.

(14) Where stock is sold at the par value of \$100, and upon which it appears that only \$25 have been paid, the tax is to be reckoned upon the face value of \$100, and not upon the \$25.

(15) Where one certificate represents several shares, the tax of 2 cents on each \$100 or fraction thereof is to be reckoned on the face value of the certificate, and not on the face value of each separate share.

(16) On transfer of one certificate representing 500 shares, \$5 par value, the stamp tax required is 50 cents.

(17) When stock is transferred for which no certificate has been issued, and the evidence of transfer is shown only by books of the company, the stamps should be placed upon such books. Where the change of ownership is by the transfer of a certificate, and the certificate contains a blank form of assignment on the back, which is filled in by the insertion of the name of the person to whom the stock is transferred, the stamp should be placed upon the certificate.

(18) In case of an agreement to sell, or where the transfer is, by the delivery of the certificate, signed in blank, the name of the transferee or vendee to be filled in afterwards, there should be made and delivered by the seller to the buyer a bill or memorandum of sale, to which the stamp should be affixed.

(19) Where certificates of shares were sold and delivered before July 1, 1898, entry of transfer on corporate books after June 30 does not require stamp.

(20) New certificates of stock issued to holder in lieu of original certificate, and remaining in his ownership, do not require stamps.

(21) When certificate of stock is sold and stamp tax is paid on memorandum thereof, upon transfer of this certificate to purchaser's name no additional tax for such transfer is required. Where one certificate represents several shares of stock (however large the number of shares), on transfer of this certificate the stamp tax is to be reckoned on its face value and not on the face value of each separate share of stock which it represents.

(22) Transfers of stock from parties occupying fiduciary relationship to those for whom they held the stock are transfers subject to taxation.

(23) A owns a certificate of 100 shares of stock; he transfers 50 shares to B; there are two certificates of 50 shares each issued in lieu of the 100-share certificate, 50 shares going to A and 50 shares to B. The tax imposed is on the transfer to B; there is no tax on A's transfer to himself.

(155) An instrument authorizing the secretary to transfer stock on the books of the company held not to be taxable as a power of attorney. (Vol. 2, Treas. Dec. (1899), No. 21467.)

(156) An instrument appointing an attorney in fact to transfer stock on the books of the company requires to be stamped as a power of attorney, but an instrument authorizing the secretary to make the transfer is held not to be a power of attorney. (Vol. 2, Treas. Dec. (1899), No. 21563.)

Among the conveyances above mentioned and requiring stamps, may be included many of the current forms of leases conveying mineral rights in oil and gas, and transfers of such leases. It is only instruments transferring an interest in realty which are required by the Act to be

so stamped. But, as already seen, those which convey title to the minerals are of this character, though the mineral is still in the soil, and not mined or reduced to possession. Leases which grant a mere privilege of prospecting and mining, conveying no interest in the mineral until reduced to possession, would transfer to the lessee no interest in the realty, and would not come under the Act.

The question of what constitutes an interest in the land itself being one of Texas law, the Federal courts and authorities would, it may be assumed, follow the rulings of the Supreme Court of Texas on that subject, as announced in *Texas Co. vs. Daugherty*, *supra*. See *Guffey vs. Smith*, 237 U. S., 101, advance sheets.

The Act of 1914 also imposes a license tax upon brokers. This, followed by some judicial and departmental rulings upon the similar enactments of 1898, is as follows:

Second. Brokers shall pay \$30. Every person, firm, or company whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker.

(21) The loaning of money for oneself or for others on commission does not subject the lender to special tax as a broker; but if a person makes it a business to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for himself or others, he is required to pay the tax. "It is only when making sales and purchases is his business, his trade, his profession, his means of getting his living, or making his fortune that he becomes a broker within the meaning of the statute." (*Warren vs. Shook*, 91 U. S., 704.)

(22) Persons or firms acting as agents for parties loan-

ing money upon promissory notes secured by mortgages are not brokers.

(23) A lawyer can make investments for clients without being liable, unless he does it to such an extent that it can be called a "business."

(24) Loan and mortgage companies not liable for loaning money on notes or bonds secured by mortgage or trust deed on real estate. If they purchase notes, bonds, or other securities they become liable as brokers.

(25) A person engaged in the business of placing loans secured by notes and mortgages upon real estate, acting simply as agent, receiving a commission for his services in obtaining the application for the loan and attending to the execution of the papers, is not a broker.

(26) A person engaged in the business of selling real estate, acting as the agent of the owner in finding purchasers and receiving a commission for his services, is not a broker.

(27) When persons negotiate purchases or sales of promissory notes, if these are only occasional acts and do not constitute their regular business, they are not brokers within the meaning of the act.

(28) Bucket-shop proprietors giving memorandum of transactions are required to pay special tax as brokers.

(29) The principal's special-tax stamp for his place of business in another city covers the transactions only at that place of business and can not cover the business done elsewhere at a branch office.

(30) Broker's tax is not required to be paid at branch offices where a clerk is employed whose sole duty is to receive orders and transmit them by wire to the head of the office. The mere receipt and transmission by clerks of orders is not regarded as carrying on the business of a broker. (Vol. 2, Treas. Dec., No. 19843.)

(31) Special tax must be paid for every branch office where the employee in charge not only receives and transmits orders with the money to the main office, but also receives from the main office moneys for disburse-

ment to customers, or keeps accounts with the customers at the branch office, or does other business with relation to the transactions of brokers at such branch office. Separate special tax must be paid and a separate stamp taken out for every "bucket shop," whether such office is called a branch office or a main office. (Vol. 2, Treas. Dec. (1898), No. 20374.)

(32) It is the language of the statute, and not the ordinary and usual meaning of the word "broker," which must govern in determining who is a broker required to pay a special tax. (Vol. 1, Treas. Dec. (1899), No. 20549.)

(33) While a mining syndicate or other association issuing certificates of stock in a company organized by it is not required to pay a special tax as a broker therefor, a manager or other person employed by it to sell such certificates on commission is a broker and required to pay special tax. (Vol. 1, Treas. Dec. (1899), No. 20637.)

(34) An express or railway agent doing business for his principals only, not a broker. (Vol. 1, Treas. Dec. (1898), No. 20106.)

Persons engaging in only occasional dealings in oil property or stock of companies may not always be able to decide whether their transactions bring them within the definition of a broker under this Act. No precise definition can be safely given. The test appears to be whether such dealings by them are sufficient to constitute engaging in a business. We are permitted to add the following copy of a circular letter used by the United States Collector at Austin, Hon. A. S. Walker, in answer to frequent inquiries addressed to him upon this question:

"In reply to your telephone inquiry to this office today, you are advised that the Act of Oct. 22, 1914, imposes a broker's tax of \$30.00 per annum on every person, firm or company whose business it is to negotiate purchases or sales of stock, promissory notes or other securities for themselves or others. Under this statute your company

would have the right to sell its own stock without incurring liability, or any individual would have the same right, and either your company or an individual would have the right to employ an agent for that purpose, under an exclusive contract calling for compensation by salary or by commission, and under those conditions the agent would not incur liability unless he were at the same time engaged in the business of negotiating purchases or sales of stock as provided in the law. The right referred to of employing agents will not authorize an evasion of the law, it being necessary that such employment should be in good faith. The payment of the broker's tax for an office at one place would permit the transaction of business at other places through the usual channels, by mail or otherwise, but if it were intended that more than one office should be maintained, each office would be liable to a separate tax. To incur liability under this statute, it is not necessary that a man shall devote his exclusive attention to the brokerage business. He may be liable, and still have another occupation for means of livelihood, but it is necessary that he shall make it a substantial part of his business. One isolated transaction would not create liability."

FORMS.

FORM I.

CHARTER OF A DOMESTIC CORPORATION.

STATE OF TEXAS,

County of.....

Know all men by these presents: That we,.....
and....., all citizens of
county, Texas, under and by virtue of the laws of
 this State, do hereby voluntarily associate ourselves together for the
 purpose of forming a private corporation under the terms and condi-
 tions hereinafter set out, as follows:

1. The name of this corporation is.....
2. The purpose for which it is formed (here quote the statutory purpose).
3. The place where the business of the corporation is to be trans-
acted is at.....County, Texas.
4. The term for which it is to exist is.....years.
5. The number of directors shall be.....and their names
and postoffice addresses are as follows:

.....

6. The amount of capital stock is \$.....divided into.....
shares of \$.....each, all of which capital stock has been sub-
scribed, and 50 per cent paid in, as per affidavit, attached hereto.

In testimony whereof we hereunto sign our names this.....day
 of....., 191.....

.....

STATE OF TEXAS,

County of.....

Before me, the undersigned authority, on this day personally ap-
 peared.....,
 and....., known to me to be the persons
 whose names are subscribed to the foregoing instrument, and severally
 acknowledged to me that he executed the same for the purpose and
 consideration therein expressed.

In testimony whereof I hereunto subscribe my name and affix the

seal of my office, this.....day of....., A. D. 191.....
 [SEAL.] (Name)
 (Office)

NOTE.—This concise and comprehensive form was suggested by Hon. F. C. Weinert, when Secretary of State, in his pamphlet containing the principal corporation laws of the State, from which we take the liberty of borrowing it. We would, however, add the suggestion that it is not always advisable, nor would it in all cases be quite sufficient, to confine the statement of the purpose for which the corporation is formed to the language of the statute itself.

FORM II.

PURPOSE CLAUSE FOR CHARTER OF AN OIL COMPANY.

The purpose of this corporation is, the establishment and maintenance of an oil company, with authority as follows: to purchase and hold land in the operation of its business containing deposits of coal, others minerals, petroleum, and gas or the title to such minerals apart from the fee in the land; to mine, develop and use such minerals, by borings, wells, or other mining operations appropriate to their production at the surface, and to sell and market the same; to contract for the lease and purchase of the right to prospect for, develop, and use coal and other minerals, petroleum and gas; to erect, build, and own all oil tanks, cars, and pipes necessary for the operation of the business aforesaid, and to acquire and own the land necessary therefor; and, generally, to exercise all powers with reference to the acquisition, mining, use, and sale of such minerals which are expressly or by implication conferred by the laws of the State of Texas upon a corporation created under Articles 1120, 1121, of the Revised Statutes of Texas, for the purposes specified in Paragraph 16, of said Article 1121.

NOTE.—The charters of oil companies in this State have usually followed, literally, in the purpose clause, the language of paragraph 16, Article 1121. It seems probable, but not quite certain, that such purpose clause would confer all the powers above enumerated. But a charter may by its terms give more restricted powers than the laws permit to be conferred on the corporation and this form is suggested as one which would remove some possible doubt as to the power of the corporation to do all which it is authorized by the law to acquire a right to do.

FORM III.

PURPOSE CLAUSE IN CHARTER OF CORPORATION FOR PRODUCING, TRANSPORTING
AND SELLING GAS.

The purpose of this corporation is to produce, make and manufacture gas by natural or artificial means and to transport and sell the same to individuals, the public and municipalities for light, heat, power and other purposes and to make reasonable charges therefor, to construct, maintain and operate power plants, substations and such machinery, apparatus, pipes, devices and arrangements as may be necessary to operate such lines at and between different points in this State and to conduct the business of this corporation at and between different points in this State; and generally to do any and all things and to exercise any and all powers as a gas company set forth in Chapter III of the General Laws passed by the Regular Session of the Thirty-second Legislature.

NOTE.—This form for the purpose clause of a natural gas company is the one suggested by the Attorney General in his opinion holding that such corporations were authorized by the Act therein mentioned. See Report of Attorney General for 1912- 1914, p. 287.

FORM IV.

AFFIDAVIT TO ACCOMPANY ORIGINAL CHARTER, OR AMENDMENT TO CHARTER
INCREASING CAPITAL STOCK.

STATE OF TEXAS,

County of.....

Before me, the undersigned authority, on this day personally appeared.....known to me, who, having been by me first duly sworn, on oath say each for himself:

That they are the identical parties who executed the charter of.....company as incorporators (or that they comprise the present board of directors of the.....company), that the full amount of the (increased) capital stock of said company has been in good faith subscribed and \$.....thereof paid in; that the following are the names and postoffice address of the parties subscribing to the capital (or increased capital) stock:

Name.

Postoffice Address.

.....
.....

That the amount subscribed by each and the amount paid by each is as follows:

Name.	Amount Subscribed.	Amount Paid.
.....		
.....		

That the above subscriptions were paid as follows:*

Subscribed and sworn before me this.....day of.....A. D. 191.....

Notary Public.....County, Texas.

*Here should be added the manner of payment, whether in cash, property or labor, describing the property or labor, as provided in Art. 1126, R. S.

Proof of final payment must be made in same manner as proof of payment of original capital stock.

NOTE.—This affidavit should accompany the charter, to supply the information required to be furnished to him by Articles 1125-1128, Revised Statutes. The form is that suggested by Secretary of State Weinert in his pamphlet on the corporation laws.

LEASES AND CONTRACTS.

The reported decisions give in full a number of leases and contracts, the construction and effect of which have been considered by the courts, and which may be used as forms for these agreements in the light of such rulings. Among these the following may be consulted:

O'Neil vs. Sun Co., 123 S. W., 172, in which performance by the lessee of the conditions prescribed was held to give him a right to oil taken from the leased tract, though produced by a well sunk by the lessor. Writ of error was refused by the Supreme Court.

Emery vs. League; 31 Texas Civ. App., 474, 72 S. W., 603. A lease by a tenant in common, which was held forfeited by the failure of the lessee to procure partition as agreed. Writ of error refused.

McAfee vs. Grubb, 164 S. W., 925, gives the form of a lease under which the lessee was held to have acquired a right to the oil for the full term of his lease, twenty years, by his compliance with the contract, though subsequently he ceased operations. But in this case writ of error has been granted, and it is now pending in the Supreme Court.

The contract considered in Witherspoon vs. Staly, 156 S. W., 557, and there held forfeited by the lessee's failure to perform, will be found in full in the report of the case on a former appeal, 138 S. W., 1191. In the second appeal writ of error was refused by the Supreme Court.

The contract passed on by the Supreme Court in National Oil &

See 95 S.W.

Pipe Line Co. vs. Teel, 95 Texas, 591, 68 S. W., 979, is given in full in the opinion of the Court of Civil Appeals, 67 S. W., 545.

From these and from other cases which give only the material provisions of the contracts or the parts involved in the decisions, forms may be found which cover nearly all the provisions commonly contained in instruments of this character. It has been thought proper, however, to insert some specimens of the forms of oil and gas leases in common use, for the convenience of those not having time or opportunity to consult them in the reported decisions.

FORM V.

THE STATE OF TEXAS,

County of.....

Know all men by these presents: That.....
of.....County, Texas, the Part.....of the First
Part, in consideration of the sum of.....paid by.....
Part.....of the Second Part, the receipt of which is hereby acknowl-
edged, and the further consideration hereinafter mentioned,

Have granted, bargained, sold and conveyed, and do by these pres-
ents grant, bargain, sell, and convey unto the said part.....of the
Second Part,..... heirs and assigns, all of the oil, gas and
coal and other minerals in and under the following described land,
together with the right of ingress and egress at all times for the pur-
pose of drilling, mining and operating for mineral and to conduct
all operations and to lay all pipe necessary for the production, mining
and transportation of the oil, gas, water, coal or other minerals, with
the right to use sufficient water, gas or oil to operate said property,
and shall have the right to remove all machinery, fixtures and im-
provements placed thereon at any time, reserving, however, to the
part..... of the First Part the equal one..... of all oil produced and
saved upon said premises to be delivered in the pipe line to the credit
of the part.....of the First Part free of charge.

If coal is found, the Part.....of the Second Part agree to pay to
the First Party 4 cents per ton for every ton of the same that is
mined and marketed, payable quarterly; if gas or other minerals are
found, Second Party agrees to pay the First Party..... for the
product each year, payable quarterly, for the product of each well,
while the same is being used off the premises; and Part.....of the
First Part, by furnishing..... own pipe and connections, shall
have sufficient gas free of cost for use in one dwelling house on the
premises, so long as the gas is utilized off the premises, but at his
own risk.

Whenever First Party shall request it, Second Party shall bury all
oil and gas lines, and pay all damage done to the growing crops by
reason of burying and removing the same.

No well shall be drilled within..... feet of any building now on said premises without the consent of the First Party.

Said land being of the following description, to-wit:

.....

 Containing Acres, more or less;

TO HAVE AND TO HOLD THE ABOVE DESCRIBED PREMISES unto the said part..... of the Second Part, their heirs and assigns, on the following conditions: In case operations for either the drilling of a well for oil or gas mining or other minerals is not commenced and prosecuted with due diligence within..... from this date, then this grant shall immediately become null and void as to both parties; provided, that Second Party may prevent such forfeiture from year to year by paying to the First Party the sum of \$..... per..... until such well is commenced, or until shipments from such mines have begun, and it is agreed that the completion of a well shall operate as a full liquidation of all rental under this provision during the remainder of the term of this lease, which payments can be made at..... Bank of..... or payable direct to part..... of the first part.

In case the part..... of the Second Part should bore and discover either oil or other minerals, then in that event this grant, encumbrance and conveyance shall be in full force and effect for twenty-five years from the time of the discovery of said product, and as much longer as oil, gas or other minerals can be produced in paying quantities thereon. Whenever sales are being made of the product produced on the land above described, a settlement thereof shall be made at the end of each quarter.

This grant is not intended as a mere franchise, but is intended as a conveyance of the property above described for the purpose herein mentioned, and it is so understood by both parties to this agreement.

The part..... of the Second part may at any time execute an instrument admitting and declaring this contract cancelled and upon delivery of the same to the part..... of the first part or upon the filing of the same for record, this contract and all liabilities and payments under it, from and after such time shall cease and determine.

.....

 It is understood between the parties to this agreement that all conditions between the parties hereunto shall extend to their heirs, executors, administrators and assigns.

WITNESS our hands, this the..... day of..... 191....

.....

 (To Be Acknowledged same as Deeds.)

FORM VI

THE STATE OF TEXAS,

County of.....

Know all men by these present: That I.....
of the County of..... and State of Texas, have and by these
presents do hereby demise, let and lease unto the.....
hereinafter styled the.....successors
and assigns, the tract of land herein described, for the purpose
of exploiting the same for, and the production of minerals therefrom;
and also grant and convey all of the oil, gas and other minerals
in and under said land, as also the exclusive right of drilling and
operating thereon for oil or gas, together with a right of way for and
a right to lay pipe lines to convey water, oils, steam and gas, and the
right to have sufficient water, oil and gas from the premises to drill
and operate any wells that may be bored, and also such other priv-
ileges as are reasonably requisite for the conduct of said operations,
and the right to remove, at any time, from said premises, any and all
property which may have been placed thereon by said.....
The said premises as to which this instrument does apply are situat-
ed in..... County, State of Texas, and described as follows:

.....
.....
TO HAVE AND TO HOLD unto the said..... successors
and assigns for the term and under the provision, as follows, to-wit:

1. There is hereby expressly guaranteed to said.....
the right at any time before the expiration of twelve months from
this date to begin operations of drilling a well for oil on said prem-
ises, and also the right to extensions of time in which to begin such op-
erations, for successive periods of six (6) months, on conditions that the
said shall, on or before the first day of each
respective six months pay to..... or deposit to.....
credit in the..... Bank of..... the sum of
..... (\$.....) Dollars; provided, that if such pay-
ment shall not be made on or before first day of each such res-
pective six months period, then and on such default, this lease shall
wholly determine; and provided, further, that these successive periods
in which the right may be acquired to begin the operation of drilling
a well in search of oil or gas, shall not exceed in the aggregate five
(5) years from this date, and if such operations shall not be begun
on or before the expiration of said five (5) years from this date, then
this lease shall wholly determine.

2. If said..... shall avail..... of the right herein
guaranteed and begin operations of drilling of a well on said prem-
ises, then from and after the beginning of such operations, said

.....shall not be required to make any further money payments hereunder; provided, however, if said..... shall begin such operations of drilling a well but shall fail to prosecute such operations with reasonable diligence, then this lease shall become of no effect.

If..... shall begin such operations of drilling a well either within the fixed twelve months period from this date or within any extension period for which it may have paid as above provided, then said..... shall have the right to make as many attempts to find oil or gas..... please....., and to continue the exercise of such right as long as..... please....., even beyond said term of five years from this date; provided only, such attempts shall be successive in the sense that until oil or gas be found not more than sixty days shall elapse between the cessation or abandonment of work on one well and the beginning of work on another.

3. If, in the exercise of the right hereby conferred, oil or gas be found in paying quantities on said land, then the said..... shall deliver as royalty to said..... free of expense (.....) part of all the oil saved from that produced, such delivery to be made either in tanks with connection by lessor provided, or into any pipe line that may be connected with the well; and if any well on said premises produces gas in paying quantities, and such gas is used or marketed off the premises by said, then the said..... shall be paid at the rate of One Hundred (\$100.00) Dollars per year for each and every such well, such payments to be made at the end of each such year

4. If, as a result of any explorations under this contract, any other minerals than oil or gas shall be found in quantities deemed by..... to be paying, then..... shall have the right to mine for and produce same, paying to the lessor what, under all circumstances, may be reasonable royalty.

5. It is expressly declared that if oil, gas or other minerals, or any of them, be found in paying quantities, then the said..... shall become at once vested with an estate in and to all the minerals underlying said land, with right to produce the same, and any and all of same, as long as any one of said minerals shall be produced in paying quantities.

6. It is agreed that without the written consent of both parties hereto, no well shall be drilled within..... (.....) feet of the present buildings on said premises, and that the use of the surface of the land is hereby granted only so far as may be necessary to conduct mining operations, including the saving, storing and transporting the minerals.

7. It is further provided that if oil or gas or other minerals in paying quantities shall be found, and the..... successors or assigns hereunder, should conclude that..... do not desire to

operate under this lease, then the right is conferred to surrender the same upon payment of One Hundred (\$100.00) Dollars to the lessor, and such right of surrender shall also confer the privilege of removing from said premises any and all material placed thereon by said....., successors and assigns.

8. It is further agreed that all the conditions and terms herein shall extend to the heirs, executors, legal representatives, successors and assigns, of the parties hereto.

The said..... has this day paid to the said..... the sum of..... (\$.....) Dollars, the receipt whereof is hereby acknowledged, and which payment is received in full satisfaction of any and every right hereby granted, including the right to extend the privilege of exploration of said land.

Witness the signatures of the parties hereto this the..... day of..... A. D. 191....

.....
.....
.....
.....
.....
Lessor.

.....
Lessee.

By.....
Agent.

(To Be Acknowledged same as Deeds.)

FORM VII

Know all men by these presents: That..... of the Postoffice of....., State of....., hereinafter called lessor (whether one or more), for and in consideration of dollars, cash in hand paid, receipt of which is hereby acknowledged, do.....hereby lease unto..... hereinafter called lessee, the following described land, situated in the County of State of Texas:

.....
.....
for the purpose of prospecting for oil, gas and sulphur, and the production of the same therefrom, together with the exclusive right of ingress and egress at any and all times to prospect, drill, mine and otherwise operate hereunder, and the right to erect, maintain and remove all necessary or proper structures and appliances, including the right to pull the piping from wells, and to install, maintain and remove all tanks and other means of storage and all pipes and other means of transportation; and, subject to the royalties here-

inafter mentioned, there is hereby granted and conveyed to said lessee all of the oil, gas and sulphur in and under said land.

The royalties above mentioned shall be (a) on oil, a quantity equal to one-eighth of all produced and saved, the same to be delivered at the wells or to the credit of the lessor in the pipe line to which the wells may be connected; (b) on natural gas, at the rate of two hundred dollars per annum, payable quarterly, for each well producing gas exclusively, and from which gas is then being used or sold off the premises, it being understood that the lessor shall have the privilege, at the lessor's own risk and expense, of making connections and using gas from such wells free of charge for one dwelling on said land; (c) on gas produced from oil wells, when such gas is used or sold off the premises at the rate of ten dollars per annum for each well while the gas is being used or sold, and when such gas is used for the manufacture of gasoline there shall be an additional payment at the rate of ten dollars per annum for each well while gas is being so used for the manufacture of gasoline; and (d) on sulphur, at the rate of one dollar per ton for all mined and marketed from said land. But it is understood and agreed that the lessee shall have the free use of oil, gas, wood and water from said land for all purposes of development and operation.

If operations for the drilling of an oil or gas well are not begun on said land on or before the first day of....., 191.... this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to the credit of the lessor in the..... Bank at....., (which shall continue as the depository regardless of changes in ownership of the land,) the sum of..... dollars, which payment or tender may be made by the check or draft of the lessee, and, however made, shall operate to confer on the lessee the privilege of deferring the time limit for six months from said date. Thereafter, in like manner and upon like payments or tenders of said amount, the time limit may be further deferred for additional periods of six months successively, provided always that this lease can not be kept in force by such payments in the absence of drilling operations for a longer period than five years from the date last above set forth. But nothing in this paragraph contained shall obligate the lessee, against its wish or option, to make any such payment or to drill or otherwise carry on operations hereunder. And it is understood and expressly agreed that the consideration first recited in this lease, the down cash payment, and the obligation of the grantee contained in the next ensuing paragraph thereof, shall be held to support and sustain, not only the privileges granted to the date first written in this paragraph, namely, the date when this lease is to terminate unless an additional payment or tender is made, but also the lessee's option of extending that period from time to time and keeping this

lease in force as aforesaid, as well as any and all other rights and privileges conferred on the lessee by this instrument.

If during the period of this lease or the extensions of the time limit for drilling, and within five years from the date above set forth, and prior to the discovery of oil or gas on said leased land, there shall be drilled on adjacent land and within 200 feet of any line of said leased land, a well producing as much as 50 barrels of oil per day for thirty consecutive days, the lessee will, with reasonable diligence, begin and prosecute the drilling of a well on said leased land in a faithful effort to find and produce oil in paying quantities.

After operations for the drilling of an oil or gas well shall have been begun on said leased land it shall not be necessary for the lessee to make any further payments in lieu of drilling operations as provided in the second preceding paragraph hereof in order to keep this lease in force; and during said period of five years drilling operations may be suspended from time to time, without terminating this lease, provided the lessee shall have paid or tendered, or shall then pay or tender, the amount hereinbefore mentioned for the then current period of six months, including the time of such suspension, and provided further that after such operations are so begun no such payment or tender shall be necessary when the operations are being carried on in good faith and the period of suspension is less than thirty days.

If the lessee shall sink a well or shaft and discover oil, gas or sulphur in paying quantities in or under the above described land, then this lease shall remain in full force and effect for ten years from such discovery, and as much longer as oil, gas or sulphur shall be produced therefrom in paying quantities; and, having so discovered oil, gas or sulphur in paying quantities, the lessee shall be exempt from loss or forfeiture of this lease, in whole or in part, except after judicial ascertainment that the lessee has failed to perform its duty and discharge its obligations hereunder and a reasonable opportunity thereafter to prevent such loss or forfeiture, and in event of final loss or forfeiture there shall be reserved to the lessee each producing well or mine with 10 acres of land surrounding the same to be designated by the lessee.

No well shall be drilled nearer than two hundred feet to any house or barn now on said land, unless by consent of the lessor, and nothing herein contained shall deprive the lessor of the full use and enjoyment of said land, subject to the privileges and estate hereby granted, and when requested by the lessor the lessee shall bury its pipe lines so that they will not interfere with cultivation.

If the interest owned by the lessor in said land is or shall prove to be less than the entire fee the royalties and moneys herein provided for shall be delivered or paid to the lessor in the proportion only that the interest of the lessor bears to the entire fee.

If the estate of either party hereto is assigned—and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to the assigns and successive assigns, but no change in ownership of the land or the rentals or royalties, by purchase or otherwise, shall be binding on the lessee until it shall have been furnished with notice and proper evidence of such change.

IN TESTIMONY WHEREOF this instrument is signed this the..... day of..... 19.....

Witnesses:

.....

 (To Be Acknowledged same as Deeds.)

FORM VIII.

STATE OF TEXAS,

County of.....

Know all men by these presents: That this memorandum of agreement this day made and entered into by and between.....

.....
 of.....County, Texas, parties of the first part and
 of..... County, Texas,
 parties of the second part,

Witnesseth:

That whereas, the parties of the first part own certain land situated in.....County, Texas, which is supposed to be underlaid with oil and gas, which they desire developed, and a part of which the party of the second part is desirous of developing for oil. It is therefore mutually agreed between the parties hereto:

1. That the parties of the first part for the consideration hereinafter mentioned will allow the party of the second part to enter upon and take possession of the following described portion of said land for the purpose of developing the same for oil, to-wit:

.....

 2. That the party of the second part hereby agrees for the consideration hereinafter stated, to enter upon and undertake the development of said land for oil, and within..... days from the date hereof to commence one well thereon, and to furnish all machinery and material, and at..... own expense, bore or sink the said well to the depth of.....feet or more, unless oil is found in paying quantities at lesser depth, and in constructing said well to use ordinary care, skill and diligence, and to complete the same in any event within..... months from this date.

3. That if oil is developed in paying quantities in the said well,

then the party of the second part agrees to begin within.....days from the completion of said well, the boring of another well on said land and to furnish all material and machinery at.....own expense and to prosecute the work of sinking said second well with ordinary care, skill and diligence, and sink the same to the depth of at least.....feet, or more, unless oil in paying quantities is developed at lesser depth; and if oil is developed in said second well then the party of the second part is to bore at.....own expense a third well upon said land and to continue at.....own expense within a reasonable time boring other wells on said land so long as oil is found in paying quantities and to such number as is necessary for the reasonable development of the entire said tract of land, due regard being had to the interests of all parties hereto and the development of other land in the vicinity of said tract being considered.

4. That if oil is not discovered in paying quantities in the first well the party of the second part shall have the right to discontinue boring on said land and shall at once surrender to the parties of the first part the possession thereof; but if oil in paying quantities is developed in the first well but not in the second well, then the party of the second part shall have the right, upon surrendering to the parties of the first part, possession of all of the said tract of land except..... acres surrounding the said first well, to stop drilling on said land, in which event all rights of the party of the second part under this agreement shall cease, except the right to operate the said first well until it is exhausted.

5. That if oil is developed the party of the second part shall use due diligence in producing the same and shall furnish all material, labor, machinery and fixtures necessary to the development of said land and the storing and preserving of all oil produced therefrom and in consideration thereof and of the development of said land shall retain and own.....of all oil produced and saved from the said premises from developed wells which have to be pumped or operated with compressed air, and.....of all oil produced from wells which gush; and in consideration of this lease the parties of the first part shall own the remaining..... part of all oil produced and saved from said land which shall be delivered by the party of the second part free of cost to the parties of the first part, in tanks furnished by the party of the second part, or in pipe lines designated by the parties of the first part, all necessary connections with the tanks and pipe lines to be made by and at the expense of the party of the second part.

6. That the party of the second part reserves the right on the termination of this lease to remove from the premises all improvements and machinery placed thereon by..... and shall have that right provided it is exercised and same removed within.....

days after the termination of this lease, but if not so removed the same shall become the property of the parties of the first part.

7. The party of the second part shall keep correct books of account showing the production of each and every well as well as the share or proportion due to the parties of the first part, which books shall be kept open for the inspection of all parties interested in this agreement, at all reasonable times.

8. The parties of the first part shall have the right to have at any and all times a representative upon the ground who shall have access to the tanks, wherever oil is stored, with the right to measure the same, and shall be afforded all reasonable facilities for investigating the amount of oil produced from said land and the condition of the wells and generally overlook the interests of the parties of the first part with relation to this lease.

9. The only consideration for this contract of lease being the prospective royalty above provided for, the vesting of any right hereinunder in the party of the second part or the continuance thereof, if once vested, shall be conditioned upon the faithful performance by the party of the second part of all and every of the covenants, obligations and agreements hereinabove recited to be performed by..... and a failure upon the part of the party of the second part to perform any one or more of such covenants, obligations or agreements at any time for a period of thirty days shall at the option of the parties of the first part operate to forfeit all rights held by..... under this instrument and upon notice of such forfeiture being given to the party of the second part by the parties of the first part..... shall thereby cease to have any right in said premises and shall surrender the same to the parties of the first part free of all claim, and the parties of the first part shall have the right to re-enter and retake possession of said premises and eject the party of the second part therefrom and shall not be liable for any damages done on account thereof.

Witness our hands this..... day of....., 191.....
(Signed in duplicate, each party retaining a copy.)

INDEX.

References are to pages.

ABANDONMENT.	PAGE.
Of operation of wells.....	67-68
ACTIONS.	
To determine corporate existence.....	18-19
Capacity to sue and be sued.....	20-21
By creditor of corporation.....	23-24
Decrease of capital stock.....	27-28
By foreign corporation.....	49-50
For penalties on act regulating wells.....	71
On refusal of permit to sell stock.....	76
On bond given for stock sales.....	76-77
To reinstate permit to sell stock.....	78
ACCOMMODATION PAPER.	
Corporation cannot sign.....	20
AFFIDAVITS.	
Of payment of capital stock.....	15-16
Of subsequent payment of unpaid capital stock.....	22
Of subscription and payment of increased stock.....	24
Of financial condition of corporation.....	27-28
To reports required of corporation.....	35
As condition for permit to foreign corporation.....	47-48
Officers authorized to make.....	52
To determine amount of franchise tax.....	65-66
To accompany original charter.....	138-139
AGENTS.	
Power of corporation to appoint.....	19
Power to appoint general manager.....	21
Disclaiming act by corporation.....	31
Sale of stock by.....	78-79
ALIENATION.	
Of lands company is not authorized to hold.....	33-48
AMENDMENT.	
Of charter by corporation.....	17-18
Of charter by legislature.....	19
Of by-laws by corporation.....	28
ATTORNEY'S FEES.	
As promotion expenses of corporation.....	72-101

ATTORNEY GENERAL.	PAGE.
To bring suit for penalties.....	51
Opinion construing Blue Sky Law.....	81-108
BAYS AND TIDAL WATERS.	
Mineral rights in.....	112,113
BLUE SKY LAW.	
Effect on sale of stock.....	25, 26, 108
Statute regulating sales of stock.....	72-81
Opinion of Attorney General construing same.....	81-108
BONDS.	
Extending credit of corporation. Note.....	20
For what purposes issued.....	26
Action for unlawful issuance.....	26-27
Report of bonded indebtedness.....	34
For compliance with Blue Sky Law.....	76
Action upon such bond.....	77
BOOKS.	
To be kept by corporation.....	29, 77, 78
BROKERS.	
Internal revenue license tax on.....	132-135
BY-LAWS.	
Power of corporation to make.....	19
Note on same.....	21
Making and amendment of.....	28
CARS.	
Power of pipe line to own.....	44
CASING.	
Of oil and gas wells.....	67
CHARTERS.	
Must be by general law.....	7
What charter must contain.....	13-14
To be subscribed and acknowledged.....	14
Incorporation of business firm.....	15
Affidavit to accompany.....	16
Amendment of	17-18
Amendment by legislature.....	19
Fee for filing.....	52
Form for charter of corporation.....	136
CITIES.	
Power of gas company to contract with.....	40-41

INDEX

153

CITIZENSHIP.	PAGE.
Of subscribers to charter.....	14
COMMISSIONS.	
On sale of stock. Note.....	25, 26, 108
Regulation by Blue Sky Law.....	72-81
Construction of Act by Attorney General.....	81-108
CONDEMNATION.	
Power to exercise eminent domain. Note.....	13
For purposes of pipe line.....	42
CONDITIONS.	
In contracts and leases of oil and gas rights.....	114-122
CONSOLIDATION.	
Of two or more corporations.....	18
CONSTITUTION.	
Creation of private corporation.....	7
CONSIDERATION.	
Of option or unilateral contract.....	120-121
CONTRACTS.	
Power of corporation to make.....	19
Implied authority. Note.....	20
Becoming surety for another. Note.....	20
To act as trustee. Note.....	20
To acquire and hold land. Note.....	21
Power to purchase land.....	33
Leases and contracts for mining rights.....	114-122
CONTRIBUTION.	
To stock-holder paying debt of corporation.....	40
CONVEYANCES.	
Of land by corporation. Note.....	21
How made by corporation.....	32
CORPORATIONS.	
Constitutional provisions	7
Classification of	8
Creation of	8-19
Powers and duties of.....	19-33
Acquisition of land by.....	33
Reports required of.....	34-36
Liability of stockholders and directors.....	36-37
Dissolution of	37-40
Gas and water companies.....	40-41
Pipe line companies.....	41-44
Companies to produce and sell gas.....	45-46
Foreign corporations	46-50

	PAGE.
Reports to determine franchise tax.....	50-52
Fees required to be paid.....	52-53
Regulations of sales of stock.....	72-108
COURTS.	
Jurisdiction in enforcement of regulation of wells.....	70-71
CREDITORS.	
Rights on decrease of capital stock.....	27-28
Liability of stockholders to.....	39-40
DEBTS.	
Decrease of stock as affecting.....	27-28
Restrictions upon creation.....	30
Reports in regard to.....	34
DEEDS.	
By corporation	21-32
Separating title to minerals from that of the soil.....	113-114
DEPOSIT.	
Of money received from sale of stock.....	77
DIRECTORS.	
Named in charter.....	13
Increase or decrease of number.....	20, 28
Power to increase capital stock.....	24
Power to decrease stock.....	27-28
Quorum and annual elections.....	28
Effect of failure to elect.....	28-29
Have general management of corporate affairs	29
Records and books to be kept by.....	29, 77, 78
Reports and dividends to stockholders.....	29
Declaring dividend when insolvent.....	37
Repudiating political contribution.....	31
Liability for debts of corporation.....	37-39
Act as trustees on dissolution.....	39
DISCRIMINATION.	
Transportation of gas by pipe line.....	13-43
DISSOLUTION.	
Winding up affairs of corporation.....	23
How corporation dissolved.....	37-38
Appointment of receiver on dissolution.....	38-39
Officers and directors as trustees.....	38-39
Liability of stockholders to creditors.....	39-40
Contribution between stockholders.....	40
Limit of stockholders' liability.....	40

INDEX

155

DIVIDENDS.	PAGE.
Declaring when company is insolvent.....	37
DOCKS.	
Power of pipe line company to own.....	43-44
EASEMENTS.	
Mineral rights in streets and highways.....	111-112
EMINENT DOMAIN.	
Right of pipe line company to condemn.....	42
Right of gas company to condemn.....	45-46
Title to minerals in street or right of way.....	111-112
EMPLOYER'S LIABILITY.	
Regulated by statute.....	124
ESTOPPEL.	
To deny corporate power. Note.....	22
EXISTENCE OF CORPORATION.	
Dates from time of filing charter.....	16-17
Not collaterally disputed.....	18
FEDERAL LAWS.	
Not applicable to Texas public lands.....	123
Internal revenue	126-135
FEES OF OFFICE.	
Payment of charter fee and franchise tax.....	15
On reinstatement of forfeited charter.....	23
Charter fee	52-53
Plan for sale of corporate stock.....	73
FILING.	
Corporate charter	15-16
Corporation exists from time of filing charter.....	16-17
Amendments to charter.....	17
Plan for sale of corporate stock.....	73
FOREIGN CORPORATIONS.	
Obtaining permit to do business.....	46-50
Fee on obtaining permit.....	52-53
Sale of stock by.....	98-100
FORFEITURES.	
For failure to pay up capital stock.....	22-23
For watering stock.....	25
For failing to commence operations.....	38
Of mining claims.....	61

FORMS.	PAGE.
Charter of domestic corporation.....	136
Purpose clause of charter of oil company.....	137
Purpose clause for gas company.....	138
Affidavit to accompany charter or amendment.....	138-139
Leases and contracts for mineral rights.....	139-149
FRANCHISE TAX.	
Corporations created for more than one purpose.....	12-13
Payment on filing charter.....	15
Reports to determine amount.....	51-52
Fee for filing charter.....	52
For permit of foreign corporation.....	52-53
Annual tax on corporations.....	64-67
GAS.	
Obtaining rights in public lands.....	58-62
Regulation of wells.....	67-71
Is a mineral and part of the soil.....	109
Modification of title by fluid nature.....	110
Ownership by title to soil.....	109-113
Separated from title to soil by conveyance.....	113-114
Mining contracts and leases.....	114-124
GAS COMPANIES.	
Incorporation of	9-13
Privileges of such corporations.....	40-41
Companies for transporting, storing and selling.....	41-44
Corporations for generating, transporting and selling.....	44-46
Regulation of sale of stock.....	72-108
GUARANTY.	
Power of corporation to become surety. Note.....	20-21-22
HOMESTEAD.	
Wife to join in conveyance of mineral rights.....	113
INCREASE.	
Of capital stock.....	24-27
INSOLVENCY.	
Declaring dividends when insolvent.....	37
Dissolution of corporation on.....	38
INTERNAL REVENUE.	
Federal laws imposing.....	126-135
JOINT OWNERS.	
Mineral rights of.....	111

INDEX

157

LAND.	PAGE.
Corporate seal required in conveyance.....	21-33
Right to purchase and hold.....	48-49
Mining claims on public domain.....	54-64
LEASES.	
Authority of oil company to lease.....	9-10
Rights of tenants for years.....	111
Of mining rights on another's land.....	114-119
Forms of mining leases.....	139-149
MINERALS.	
Oil and natural gas.....	109
Title of owner of soil.....	109-110
Fluid and liquid minerals.....	110
Joint or common owners.....	111
Rights of tenants for years.....	111
Rights in streets, ways and easements.....	111-112
Underlying rivers and bays.....	112-113
Title separated from that of the soil.....	113-114
Contracts and leases for mining.....	114-116
Implied obligation to develop.....	117-118
Title acquired by performance.....	118-119
Options and unilateral contracts.....	120-122
Contracts for operation.....	122-123
Acquiring rights in public lands.....	123-124
Taxation of mineral right in land.....	125-126
MARRIED WOMAN.	
As stockholders or officers of corporations.....	14
Conveyance of mineral rights in homestead. Note.....	113
MINES AND MINING.	
Acquiring mining rights in public land.....	54-64
Regulation of oil and gas wells.....	67-73
MINING DISTRICT.	
In public lands.....	54
MORTGAGES.	
Power of corporation to mortgage.....	19
Reports of mortgages on property.....	34
Mortgages of franchises and property for borrowed money	43
By foreign corporation.....	48
Reports to determine franchise tax.....	51
NAME.	
Of corporation in charter.....	13
Succession by corporate name.....	19
Suit by corporate name. Note.....	20-21
Misnomer not to vitiate grant.....	32

NATURAL GAS.	PAGE.
Obtaining rights in public land.....	58-62
Regulation of wells.....	67-71
Is a mineral and part of the soil.....	109
Modification of title by fluid nature.....	110
Belongs to owner of soil.....	109-113
Separated from title to soil by conveyance.....	113-114
Mining contracts and leases.....	114-124
OFFICE.	
Principal office must be kept in state.....	32
Office outside of the state.....	44
OFFICERS.	
Power to appoint and remove.....	19
Power to appoint general manager.....	21
Quorum of directors and annual elections.....	28
Political contribution of corporate funds.....	30
As trustees of dissolved corporation.....	38-39
Doing business under old corporate name.....	40
Names of officers to be reported.....	51
Authorized to make report.....	52
Superintendent of oil or gas field.....	70
Names to be reported before sale of stock.....	73
OIL.	
Acquiring mining rights in public lands.....	58-62
Regulation of wells.....	67-71
Is a mineral and part of the soil.....	109
Title of owner of soil to.....	109
Modification of title by liquid nature.....	110
Rights of joint or common owner.....	111
Rights of tenant for years.....	111
Rights in streets, ways and easements.....	111-112
Underlying rivers and tidal waters.....	112-113
Separation of title from soil.....	113-114
Conditional contracts and leases.....	114-116
Conditions implied from lease.....	117-118
Compliance with conditions by grantee.....	118-119
Options and unilateral contracts.....	120-122
Contract for operating wells.....	122-123
Taxation of oil rights apart from land.....	125-126
OIL COMPANIES.	
Purposes for which they may be created.....	9-13
Form of charter.....	13-14
Companies for storing, transporting and selling.....	41-44
Regulation of wells by statute.....	67-71
Sale of stock by.....	72-108

INDEX

159

OPTIONS.	PAGE.
Validity of optional contract.....	120-122
OWNERSHIP.	
Of minerals while in the soil.....	109-110
PATENT.	
To public mineral lands.....	60
Passes title to minerals.....	109
PAYMENT.	
For capital stock subscribed.....	15
Proof of such payment.....	15-16
Form of affidavit to show payment.....	138-139
Of increased capital stock.....	24
How stock subscription paid.....	25-26
Of funds for political purposes.....	30
PERMIT.	
To foreign corporation to do business.....	46-50
To sell stock in corporation.....	72-108
PENALTIES.	
Forfeiture of charter.....	30-31
For failure to make report.....	36-51
For failure to comply with regulations of wells.....	69-71
PERFORMANCE.	
Of conditions in grant of mineral rights.....	118-119
PETROLEUM.	
See Oil.	
PIPE LINES.	
Discrimination by prohibited.....	43
For storing, transporting, buying and selling.....	41-44
Of company for generating and selling gas.....	45-46
PLACE OF BUSINESS.	
To be named in charter.....	13
Corporation prohibited from making.....	30-31
POWERS OF CORPORATION.	
General powers	19-22
To increase capital stock.....	24
To adopt by-laws.....	28
To increase number of directors.....	28
Of directors of corporation.....	29
To borrow money.....	29-43
To execute bonds and notes.....	29
To pledge property and income for borrowed money.....	29

	PAGE.
To sue its own members.....	32
To convey land.....	32
To purchase and hold land.....	33
To dissolve corporation.....	37-38
Of gas and water companies.....	40-41
Of oil, gas and salt companies.....	41
Condemnation of lands by such companies.....	42
To borrow, issue stock, and mortgage.....	43-46
To operate outside the state.....	43-44
To mine, transport and sell gas.....	45
To condemn easement for pipe line.....	45-46
Of foreign corporation under permit.....	48-49
 PROMOTER.	
Payment of promotion expenses.....	25-26
Regulation of promotion expenses.....	72-108
 PROMOTION EXPENSES.	
How paid	25-26
Regulation of by statute.....	72-108
 PUBLIC DOMAIN.	
Disposition of mineral lands.....	54-64, 123, 124
 PUBLIC INTEREST.	
Regulations against wasting supply of oil and gas. Note..	7
 PURPOSE.	
For which oil and gas companies may be formed.....	9-13
To be stated in the charter.....	13
Forms of purpose clauses.....	137-138
 RECEIVERS.	
To close out corporation business.....	38-39
 REPORTS.	
By gas company to state.....	34-36
To determine annual franchise tax.....	50-52, 66
 REVIVAL.	
Of forfeited charter.....	23
 RIGHT OF WAY.	
Minerals underlying railway.....	111-112
 RIVERS AND BAYS.	
Minerals underlying	112-113
 RIPARIAN PROPRIETARIES.	
Mineral rights of.....	112-113

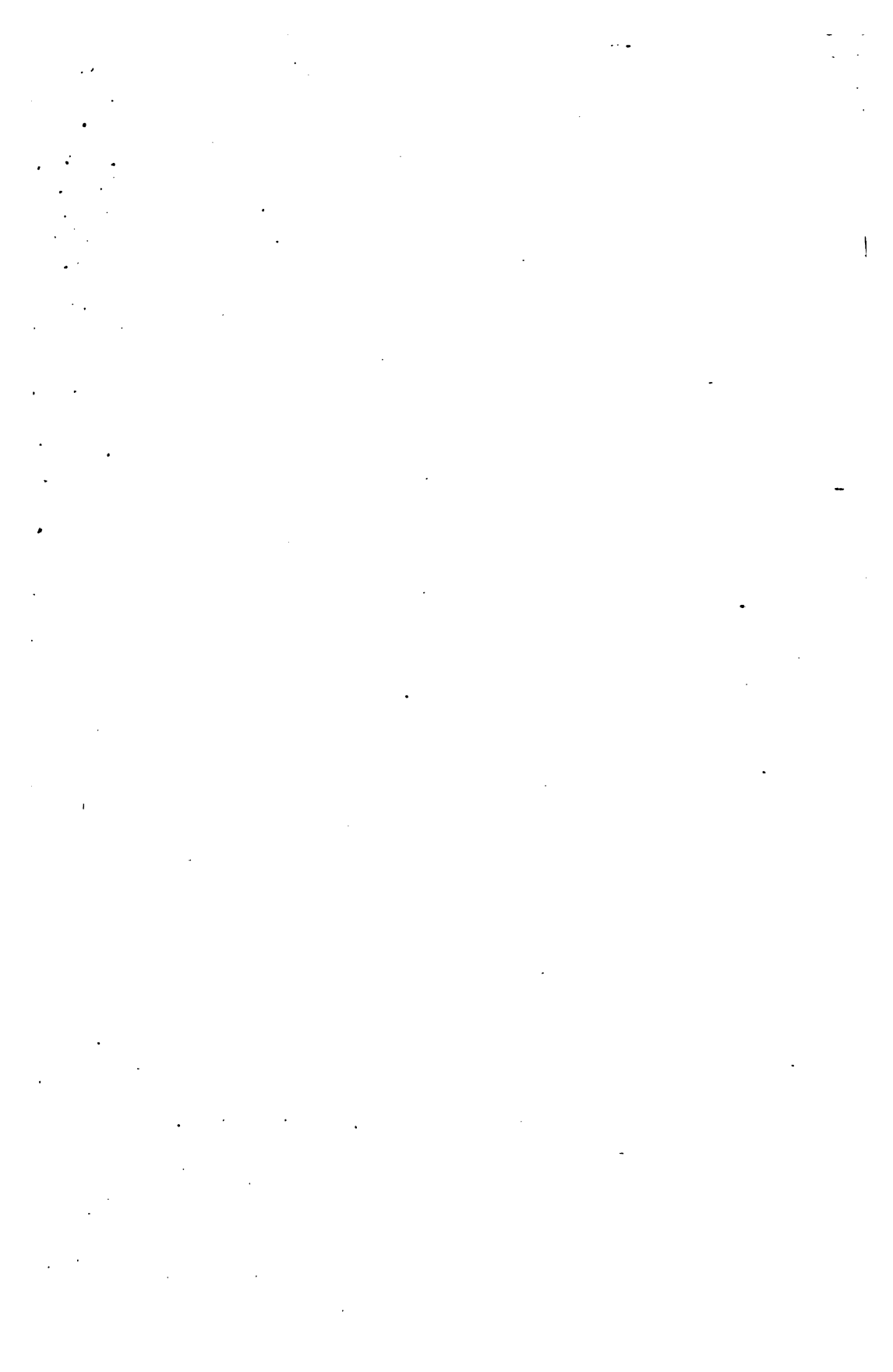
INDEX

161

SALES.	PAGE.
Of public mineral lands.....	58-62
Of stock in oil or gas companies.....	72-108
Of mineral rights in land.....	113-122
SEAL.	
Right of corporation to use.....	19
Required in corporate conveyance of land.....	21, 32
SECRETARY OF STATE.	
Duties with reference to filing charters.....	15-16
With reference to payment of capital stock.....	22-24
Reports by corporations to.....	34-35
Permit to foreign corporation.....	47-48
Fees collected by.....	52-53
Franchise tax collected by.....	64-66
Permits to sell stock by.....	72-81
SHIPS.	
Right of pipe line company to own.....	44
STAMPS.	
Required by internal revenue law.....	126-132
STOCK AND STOCKHOLDERS.	
For what stock may issue.....	7
Amount designated in charter.....	13
Married woman as stockholder and incorporator.....	14
Amount to be subscribed and paid.....	15
Showing how stock is paid for.....	16
Increase in number of directors.....	20
Unpaid stock	22-23
Increase in capital stock.....	24-27
Watering stock	25-26
For what stock can be issued. Note.....	25-26
Decrease in capital stock.....	27-28
Reports by directors to stockholders.....	29
Neglect to pay installment.....	31-32
Reports as to stock issued.....	34
Liability of stockholders.....	36-37
Dissolution by consent of stockholders.....	38
Liability of stockholders on dissolution.....	39
Contribution between stockholders.....	40
Liability on unpaid stock.....	40
Reports as to stock authorized and issued.....	51
Franchise tax based on capital stock.....	64-67
Regulation of sale of stock.....	72-108
For what issued and how paid.....	105-108

STREET AND HIGHWAYS.	PAGE.
Rights to minerals underlying.....	111-112
SUPERINTENDENT.	
Of oil and gas fields.....	70
SURETY.	
Power of corporation to become. Note.....	20-22
TANKS.	
Pipe line company may maintain.....	41
TAXATION.	
Payment of franchise tax.....	12
Fee on filing charter.....	15, 52
Reports to determine amount.....	51-52
For permit of foreign corporation.....	52-53
Annual tax on corporations.....	64-67
Ad valorem tax on mineral rights.....	125-126
United States internal revenue.....	126-135
TENANTS.	
Have no interest in minerals.....	111
TERM.	
For which corporation is to exist.....	13
Where period is not designated by charter.....	19
Of permit to foreign corporation.....	49
TRUSTEES.	
Corporate officers trustees on dissolution.....	38-39
UNILATERAL CONTRACT.	
Validity of	120-122
UNITED STATES.	
Mineral laws of.....	123
Internal revenue	126-135
WASTE.	
Opening mines on land.....	111
WATERED STOCK.	
Prohibition against	25-27
WATERS.	
Salt water appearing in wells.....	69-70
Rights of riparian owners.....	112-113
WELLS.	
Regulation of oil and gas wells.....	67-71
Contracts for operation.....	122-123





DN AWP SLM
Law of oil and natural gas
Stanford Law Library



3 6105 044 299 365

